4748

SUPREME COURT OF THE UNITED STATES.

No. 150.

CHARLES BLIVEN AND EDWARD B. MEAD, PLAINTIFFS IN ERROR,

vs.

THE NEW ENGLAND SCREW COMPANY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Clerk's certificate	1	1
Appeal of plaintiffs	2	1
Writ of error	5	2
Writ of error bond	7	3
Citation and service	11	4
Proceedings in circuit court	13	5
Declaration	14	5
Issue joined	66	22
Verdict of jury	67	22
Judgment	68	23
Bill of exceptions	70	23
Letters read in evidence by plaintiffs	71	23
Testimony of Archibald Y. Paddock	96	36
" " Jonathan L. Slocum	98	37
Letters read in evidence by defendants	104	39
Further testimony of Slocum	106	40
Testimony of John G. Bogart	110	41
" " Peter Duryea	111	42
" " Samuel W. Sears	111	42
" " Cornelius Oakley	112	42

GIDEON, Print.

mitted or allowed, to entitle the said defendants to a verdict, or to bar the said plaintiff of its action aforesaid. And the said justice did then and there declare and deliver his opinion to the jury aforesaid; that the contracts for the sale of screws, by the plaintiffs to the defendants, were subject to the custom of the plaintiffs to fill the same in part only. Whereupon the counsel for the defendants did then and there except to the said last opinion of his honor, the justice, and the said justice, under the charge and with the directions aforesaid, left the aforesaid issue and the evidence so given on the trial thereof, as aforesaid, to the said jury; and the jury aforesaid then and there gave their verdict for the said plaintiff, and inasmuch as the said several matters so produced and given in evidence on the part of the said defendants, and by their counsel aforesaid, objected and insisted on as a bar to the action aforesaid, do not appear by the record of the verdict aforesaid, the said counsel for the said defendants did then and there propose their aforesaid exceptions to the ruling, decisions and opinions of his honor, the justice, and requested him to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence on the part of the said defendants, as aforesaid, according to the form of the statute in such case made and provided; and thereupon his honor, the justice, at the request of the said counsel for the said defendants, did put his seal to this bill of exceptions on the fourth day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

S. NELSON. [L. S.]

(*Endorsed:*)

U. S. circuit court. Chas. Bliven and Edward B. Mead ads. The New England Screw Co. Bill of exceptions.

WRIGHT & MERRIHEW,
Att'ys.

Filed Dec. 11th, 1857.

Filed Dec. 4, 1858.

4748

SUPREME COURT OF THE UNITED STATES.

No. 150.

CHARLES BLIVEN AND EDWARD B. MEAD, PLAINTIFFS IN ERROR,

vs.

THE NEW ENGLAND SCREW COMPANY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Clerk's certificate	1	1
Appeal of plaintiffs	2	1
Writ of error	5	2
Writ of error bond	7	3
Citation and service	11	4
Proceedings in circuit court	13	5
Declaration	14	5
Issue joined	66	22
Verdict of jury	67	22
Judgment	68	23
Bill of exceptions	70	23
Letters read in evidence by plaintiffs	71	23
Testimony of Archibald Y. Paddock	96	36
" " Jonathan L. Slocum	98	37
Letters read in evidence by defendants	104	39
Further testimony of Slocum	106	40
Testimony of John G. Bogart	110	41
" " Peter Duryea	111	42
" " Samuel W. Sears	111	42
" " Cornelius Oakley	112	42

GIDEON, Print.

	Original.	Print.
Deposition of William Whitaker	113	42
" " Nathaniel A. Eddy	118	44
" " John C. Mather	120	45
" " William T. Grinnell	124	47
" " James Tiffany	128	48
" " Caleb Congdon	130	49
Circular issued by defendants	132	50
Letters from defendants to plaintiffs	133	51
Further testimony of Jonathan L. Slocum	135	51
Letters from plaintiffs to defendants	136	52

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this [L. S.] second day of December, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the said United States the eighty-third.

KENNETH G. WHITE,
Clerk.

CHARLES BLIVEN and EDWARD B. MEAD,
vs.
THE NEW ENGLAND SCREW COMPANY.

To the honorable the Supreme Court of the United States:

The appeal of Charles Bliven and Edward B. Mead, the plaintiffs above named, respectfully showeth, that heretofore the above named plaintiffs, Charles Bliven and Edward B. Mead, brought their suit in the supreme court of the State of New York against The New England Screw Company, the above named defendants, and by due process of certiorari such suit was removed into the circuit court of the United States for the southern district of New York, in the second circuit, that the plaintiffs by their bill or declaration demanded judgment against the above named defendants in a plea of trespass on the case upon promises.

That the defendants duly pleaded that they did not undertake or promise in manner and form as the plaintiff had in their declaration complained against them, the defendants; that such proceedings were had in the said cause, that on the 23d day of September, 1857, a judgment was rendered therein by the said circuit court for the defendants and against the plaintiffs; which said judgment of the circuit court is, as these plaintiffs are advised, erroneous, and ought to be reversed.

Wherefore these plaintiffs appeal from the said judgment of the twenty-third day of September, 1857, to the Supreme Court of the United States, and respectfully pray that the said judgment of the circuit court, and the pleadings, depositions, evidences, proceedings and record in the said cause may be sent to the Su-

preme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said judgment of the circuit court may be reversed, and a judgment rendered against the defendants therein, for damages and costs, or such other judgment as to the said Supreme Court shall seem just.

Dated New York, Octo. 1, 1857.

CHAS. BLIVEN,
EDWARD B. MEAD.

WRIGHT & MERRIHEW,
Att'y for Pl'ffs.

(*Endorsed:*)

Circuit Court of U. S. for southern district of N. Y. Charles Bliven and Edward B. Mead vs. The New England Screw Company. Appeal, &c.

WRIGHT & MERRIHEW,
Plff's Att'ys.

UNITED STATES OF AMERICA, *ss.*

[L. S.]

The President of the United States of America to the Judges of the Circuit Court of the United States for the southern district of New York, in the second circuit, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, or some of you, between Charles Bliven and Edward B. Mead, plaintiffs, and The New England Screw Company, defendants, a manifest error hath happened, to the great damage of the said Charles Bliven and Edward B. Mead, as is said, and as appears by their complaint: We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Hon. R. B. Taney, Chief Justice of the Supreme Court of the United States, this first day of October, in the year

of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the second circuit.

The return to the within writ of error appears in the schedules hereto annexed.

[L. S.] KENNETH G. WHITE,
Clerk.

Circuit Court of the United States for the southern dist. of New York.

CHARLES BLIVEN AND EDWARD B. MEAD vs. THE NEW ENGLAND SCREW COMPANY. } In Error.

Know all men by these presents, that we, Charles Bliven, of Yonkers, Westchester county and State of New York, Edward B. Mead, of Brooklyn, Kings county and State of New York, George Briggs, of the city of New York, and Joseph H. Westcott, of the city of New York, are held and firmly bound unto the above named, The New England Screw Company, in the sum of five hundred dollars, to be paid to the said The New England Screw Company, its successors or assigns; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents. Sealed with our seals, and dated the first day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above named Charles Bliven and Edward B. Mead have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the circuit court of the United States for the southern district of New York, for the second circuit:

Now, therefore, the condition of this obligation is such, that if the said above named Charles Bliven and Edward B. Mead shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES BLIVEN, [L. S.]
EDWARD B. MEAD, [L. S.]
JOSEPH H. WESTCOTT, [L. S.]
GEORGE BRIGGS. [L. S.]

Sealed and delivered in presence of—
GEO. W. WRIGHT.

Taken and acknowledged before me, this 1st day of October, 1857.

KENNETH G. WHITE,
U. S. Com'r.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

George Briggs being duly sworn, deposeth and saith, that he is a freeholder and resident of the city of New York, and is worth the sum of one thousand dollars over and above all his debts and liabilities, and property exempt by law from execution.

GEORGE BRIGGS.

Taken and sworn before me, this 1st day of Oct., 1857.

KENNETH G. WHITE,
U. S. Com'r.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Joseph H. Westcott being duly sworn, deposeth and saith, that he is a freeholder and resident of the city of New York, and is worth the sum of one thousand dollars over and above all his debts and liabilities, and property exempt by law from execution.

JOSEPH H. WESTCOTT.

Taken and sworn before me, this 1st day of October, 1857.

KENNETH G. WHITE,
U. S. Com'r.

I approve of the above sureties as sufficient security for the sum named in the above bond.

SAML. R. BETTS.

New York, Oct. 1, 1857.

UNITED STATES OF AMERICA, *ss.*

To the New England Screw Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, for the second circuit, wherein Charles Bliven and Edward B. Mead are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should

not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, this first day of October, in the year of our Lord 1857.

SAML. R. BETTS,
One of the Judges of the Circuit Court of the United States for the Southern District of New York.

Due service of the within citation is admitted October 1st, 1857.
The NEW ENGLAND SCREW COMPANY,
By G. W. STOUGHTON,
Their Attorney.

Pleas before the Judges of the Circuit Court of the United States for the southern district of New York, in the second circuit, held at the city of New York, on the sixth of October, as yet of the term of April, one thousand eight hundred and fifty-seven.

Witness: SAMUEL NELSON, Esq.,
Circuit Judge.

KENNETH G. WHITE,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Be it remembered, that on the third Monday of October, in the year of our Lord one thousand eight hundred and fifty-four, before the judges of the circuit court of the United States for the southern district of New York, in the second circuit, at the city of New York, come Charles Bliven and Edward B. Mead, by Wright & Merrihew, their attorneys, and bring into the said court, before the aforesaid judges thereof now here, *and* their certain bill against The New England Screw Company, being in custody, &c., of a plea of trespass on the case upon promises, which said bill is as follows, that is to say:

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Charles Bliven and Edward B. Mead, plaintiffs in this action, removed into this court pursuant to the act of Congress in such case made and provided, by an order of the supreme court of the State of New York, in which it was originally commenced, who are citizens and residents of the State of New York, by Wright & Merrihew, their attorneys, complain of the New England Screw Company, which is a corporation created by and under the laws of

the State of Rhode Island, defendants therein, who were summoned to answer the said Charles Bliven and Edward B. Mead, of a plea of trespass on the case upon promises:

I. For that whereas heretofore, to wit, on the seventh day of October, in the year of our Lord one thousand eight hundred and fifty-two, to wit, at the southern district of New York, the said plaintiffs, at the special instance and request of the defendants, bargained with the said defendants to buy of the said defendants, then and there sold to the plaintiffs, a large quantity of goods, to wit, eleven thousand four hundred and one gross of screws, to be furnished at the option of the defendants, of "New England screws," at and for a certain price or sum then and there agreed upon between them, to wit, at fifty per cent. discount from the fixed or list prices, or of Wilson's screws, at and for a certain other price and sum then and there agreed upon between them, to wit, at fifty-five per cent. discount from the fixed or list prices, said fixed or list prices being fixed or defined prices, at a discount from which goods of that nature were customarily sold, to be delivered to the plaintiffs at the earliest possible day after the day and year last above mentioned, and to be paid for by the plaintiffs at the earliest possible day after the day and year last above mentioned, and to be paid for by the plaintiffs to the defendants at the expiration of six months from and after the delivery of said goods; and in consideration thereof, and that the said plaintiffs, at the like special instance and request of the said defendants, had then and there undertaken and faithfully promised the said defendants to accept and receive the said goods, and to pay them for the same, at the rate or price aforesaid: they, the said defendants, undertook and then and there faithfully promised the said plaintiffs to deliver the said goods to the said plaintiffs as aforesaid; and although the earliest possible day for the delivery of the said goods as aforesaid has long since elapsed, and although the defendants afterwards, to wit, on the nineteenth day of November, one thousand eight hundred and fifty-two, to wit, at the southern district of New York aforesaid, did deliver to the plaintiffs four thousand and ninety-six gross of screws, part and parcel of the goods so sold as aforesaid; and although the said plaintiffs have always been ready and willing to accept and receive the residue of said goods, and to pay for the same at the rate or price aforesaid, to wit, at the southern district of New York aforesaid, whereof the said defendants always had notice; and although afterwards, to wit, on the thirteenth day of September, in the year of our Lord one thousand eight hundred and fifty-three, the plaintiffs did demand of the defendants the delivery of the residue of said goods to them, the plaintiffs, to wit, at Providence, in the State of Rhode Island, to wit, in the southern district of New York aforesaid, yet the said defendants, not regarding their said promise and undertaking, but contriving and in-

tending to deceive and defraud the said plaintiff in this behalf, did not nor would, within the time aforesaid, or at any time afterwards, deliver seven thousand three hundred gross of screws, the residue of the said goods, or any part thereof, to the said plaintiffs, to wit, at the southern district of New York aforesaid, or elsewhere, but wholly neglected and refused, and still do refuse, so to do, whereby the said plaintiffs have lost and been deprived of divers great gains and profits which might and otherwise would have arisen and accrued to them from the delivery of the said goods to to the said plaintiffs as aforesaid, to wit, at the southern district of New York aforesaid.

II. And for that whereas also, to wit, on the seventh day of October, in the year of our Lord one thousand eight hundred and fifty-two, to wit, at the southern district of New York, in consideration that the plaintiffs, at the instance and request of the defendants, had then and there bought of the said defendants a large quantity, to wit, other eleven thousand four hundred and one gross of screws, at and for a certain price then and there agreed upon between them, they, the defendants, undertook, and then and there faithfully promised the plaintiffs, well and truly, to deliver to them the said last eleven thousand four hundred and one gross of screws in a reasonable time after the day and year last aforesaid; and the plaintiffs in fact say, that although a reasonable time for the defendants to deliver the said last screws to the plaintiff hath long elapsed, and although the plaintiffs afterwards, to wit, in the southern district of New York aforesaid, at the expiration of such reasonable time, were and always have been ready and willing to accept and receive the last mentioned eleven thousand four hundred and one gross of screws of and from the said defendants, and to pay the defendants for the same according to the terms of the said last sale, yet the said defendants, not regarding their said last mentioned promise, and undertaking, (although often requested to deliver the same to the plaintiffs,) did not at the expiration of such reasonable or any other time, before or since, deliver to the said plaintiffs the said last mentioned eleven thousand four hundred and one gross of screws, or any part thereof, but have hitherto wholly neglected and refused, and still do neglect so to do, whereby the plaintiffs have lost and been deprived of divers great gains and profits, which might and otherwise would have arisen and accrued to them from the delivery of the said last mentioned eleven thousand four hundred and one gross of screws to the plaintiffs, to wit, at the southern district of New York aforesaid.

III. And for that whereas also, to wit, on the seventh day of October, in the year of our Lord one thousand eight hundred and fifty-two, to wit, at the southern district of New York, in consideration that the plaintiffs, at the instance and request of the defendants, had then and there bought of the said defendants a certain

large quantity, to wit, other eleven thousand four hundred and one gross of screws, at and for a certain price then and there agreed upon between them, they, the defendants, undertook, and then and there faithfully promised the plaintiffs, well and truly, to deliver to them the said last eleven thousand four hundred and one gross of screws whenever they, the defendants, should be thereunto afterwards requested.

And the plaintiffs in fact say, that although the plaintiffs afterwards, to wit, on the thirteenth day of September, in the year one thousand eight hundred and fifty-two, at Providence, in the State of Rhode Island, to wit, at the southern district of New York aforesaid, requested the defendants to deliver to them the said last mentioned eleven thousand four hundred and one gross of screws, and were then and there ready and willing to pay the said defendants for the same according to the terms of the said last sale, and although the plaintiffs were and there ready and willing and offered to accept and receive the last mentioned eleven thousand four hundred and one gross of screws of and from the said defendants, yet the defendants, not regarding the said last mentioned promise and undertaking, did not, when they were requested as aforesaid, or at any other time before or since, deliver to the plaintiffs the said last mentioned eleven thousand four hundred and one gross of screws, or any part thereof, but have hitherto wholly neglected and refused, and still do refuse so to do, whereby the plaintiffs have lost and been deprived of divers great gains and profits, which would have arisen and accrued to them from the delivery of the said last mentioned eleven thousand four hundred and one gross of screws to the plaintiffs, to wit, at the southern district of New York aforesaid.

IV. And for that whereas also, heretofore, to wit, on the sixteenth day of October, in the year one thousand eight hundred and fifty-two, at the southern district of New York aforesaid, the said plaintiffs, at the special instance and request of the defendants, bargained with the said defendants to buy of the said defendants, and the said defendants then and there sold to the plaintiffs, a large quantity of other goods, to wit, other twelve thousand and seventy gross of screws, to be furnished and delivered half thereof of New England screws, at and for a certain price or sum then and there agreed upon between them, to wit, fifty per cent. discount from the fixed or list price, and the remaining half part thereof of Wilson's screws, at and for a certain other price or sum then and there agreed upon between them, to wit, fifty-five per cent. discount from the fixed or list price, said fixed or list price being fixed or definite prices, at a discount from which goods of that nature are customarily sold, to be delivered by the said defendants to the said plaintiffs, one-half thereof on the fifteenth day of March, one

thousand eight hundred and fifty-three, and the other half thereof on the fifteenth day of April, one thousand eight hundred and fifty-three, and to be paid for by the plaintiffs to the defendants at the expiration of six months from and after the delivery of the said last goods, and in consideration thereof, and that *that* the said plaintiffs, at the like special instance and request of the said defendants, had then and there undertaken and faithfully promised the said defendants to accept and receive the said last goods, and to pay them for the same at the rate or price last aforesaid, they, the said defendants, undertook, and then and there faithfully promised the said plaintiffs to deliver the said last goods to the said plaintiffs as last aforesaid; and although the said several times for the delivery of the said last goods as aforesaid have long since elapsed, and although the said defendants afterwards, to wit, on the seventeenth day of March, one thousand eight hundred and fifty-three, to wit, at the southern district of New York, did deliver to the plaintiffs three thousand nine hundred and one gross of screws, part and parcel of the goods so sold as last aforesaid; and although the said defendants afterwards, to wit, on the twenty-third day of April, one thousand eight hundred and fifty two, did deliver to the plaintiffs three thousand six hundred and ninety-five gross of screws, other part and parcel of the goods so sold as last aforesaid; and although the said plaintiffs have always been ready and willing to accept and receive the residue of the said last goods, and to pay for the same at the rate or price aforesaid, to wit, at the southern district of New York aforesaid, whereof the said defendants have always had notice; and although afterwards, to wit, on the thirtieth day of September, one thousand eight hundred and fifty-three, the plaintiffs did demand of the defendants the delivery of the residue of the said last goods to them, the plaintiffs, to wit, at Providence, in the State of Rhode Island, to wit, in the southern district of New York aforesaid; yet the said defendants, not regarding their said last promise and undertaking, but contriving and intending to deceive and defraud the said plaintiffs in this behalf, did not nor would within the several times aforesaid, or at any time afterwards, deliver four thousand four hundred and seventy-four gross of screws, the residue of the said last goods, or any part thereof, to the said plaintiffs, to wit, at the southern district of New York aforesaid, or elsewhere, but wholly neglected and refused, and still do refuse so to do, whereby the said plaintiffs have lost and been deprived of divers great gains and profits which might and otherwise would have arisen and accrued to them from the delivery of the said last goods to the plaintiffs as aforesaid, to wit, at the southern district of New York aforesaid.

V. And for that whereas also, to wit, on the 16th day of October, in the year of our Lord one thousand eight hundred and fifty-two, to wit, at the southern district of New York, in consideration

that the plaintiffs, at the instance and request of the defendants, had then and there bought of the said defendants a large quantity, to wit, other twelve thousand and seventy gross of screws, at and for a certain price, then and there agreed upon between them, they the defendants undertook, and then and there faithfully promised the plaintiffs, well and truly to them the said plaintiffs, the said last twelve thousand and seventy gross of screws, at certain times then and there agreed upon between them, to wit, one-half thereof on the fifteenth day of March, one thousand eight hundred and fifty-three, to wit, at the southern district of New York, aforesaid. And the plaintiffs in fact say, that although the several times for the delivery of the said last goods as aforesaid have long since elapsed, and although the said plaintiffs afterwards, to wit, at the southern district of New York, at the expiration of the several times last aforesaid, were, and always have been, ready and willing to accept and receive the said last mentioned twelve thousand and seventy gross of screws, of and from the defendants, and to pay the defendants for the same according to the terms of the said last sale; yet the said defendants, not regarding their said last promise and undertaking, did not (although often requested to deliver the same to the plaintiffs) at the expiration of such several times so agreed upon for the delivery of said last mentioned twelve thousand and seventy gross of screws, or at any other time before or since, delivered to the said plaintiffs the said last mentioned twelve thousand and seventy gross of screws, or any part thereof, but have hitherto wholly neglected and refused, and still do refuse so to do, whereby the plaintiffs have lost and been deprived of divers great gains and profits, which might and otherwise would have arisen and accrued to them, from the delivery of the said last mentioned twelve thousand and seventy gross of screws to the plaintiffs, to wit, at the southern district of New York, aforesaid.

VI. And for that whereas also, to wit, on the sixteenth day of October, in the year one thousand eight hundred and fifty-two, to wit, at the southern district of New York aforesaid, in consideration that the plaintiffs, at the instance and request of the defendants, had then and there bought of the said defendants a certain large quantity, to wit, other twelve thousand and seventy gross of screws, at and for a certain price, then and there agreed upon between them, they the defendants undertook, and then and there faithfully promised the plaintiffs well and truly to deliver to them the last twelve thousand and seventy gross of screws, whenever they, the defendants, should be thereunto afterwards requested; and the plaintiffs in fact say, that although the plaintiffs afterwards, to wit, on the thirtieth day of September, in the year one thousand eight hundred and fifty-three, at Providence, in the State of Rhode Island, to wit, at the southern district of New York aforesaid, re-

quested the defendants to deliver to them, the plaintiffs, the said last mentioned twelve thousand and seventy gross of screws, and were then and there ready and willing to pay the said defendants for the same, according to the terms of the said last sale, and although the plaintiffs were then and there ready and willing, and offered to accept and receive the said last mentioned twelve thousand and seventy gross of screws, of and from the said defendants, yet the defendants, not regarding their said last mentioned promise and undertaking, did not when they were requested as last aforesaid, or at any other time before or since, deliver to the plaintiffs the said last mentioned twelve thousand and seventy gross of screws, or any part thereof, but have hitherto wholly neglected and refused, and still do refuse so to do, whereby the plaintiffs have lost and been deprived of divers great gains and profits, which would have arisen and accrued to them from the delivery of the said last mentioned twelve thousand and seventy gross of screws to the plaintiffs, to wit, at the southern district of New York.

VII. And for that whereas also, heretofore, to wit, on the sixth day of November, in the year of our Lord one thousand eight hundred and fifty-two, to wit, at the southern district of New York, the said plaintiffs, at the special instance and request of the defendants, bargained with the said defendants to buy of the said defendants, and the said defendants then and there sold to the plaintiffs, a large quantity of other goods, to wit, nine thousand nine hundred and ten gross of Wilson's screws, at and for a certain price or sum then and there agreed upon between them, to wit, at fifty-five per cent. discount from the fixed or list price, (said fixed or list price being a fixed or definite price at a discount from which goods of that nature are customarily sold,) to be delivered by the said defendants to the said plaintiffs as soon as possible after the day and year last above mentioned, and to be paid for by the plaintiffs to the defendants at the expiration of six months from and after the delivery of said last goods, and in consideration thereof; and that the said plaintiffs, at the like special instance and request of the said defendants, had then and there undertaken and faithfully promised the said defendants to accept and receive the said last mentioned goods, and to pay them for the same at the rate or price aforesaid; they, the said defendants, undertook and then and there faithfully promised the said plaintiffs to deliver the said last goods to the said plaintiffs as aforesaid; and although the earliest possible day for the delivery of the said last goods as aforesaid has long elapsed, and although the said defendants afterwards, to wit, on the seventh day of January, in the year of our Lord one thousand eight hundred and fifty-three, to wit, at the southern district of New York aforesaid, did deliver to the plaintiffs five thousand four hundred gross of Wilson's screws, part and parcel of the

goods so sold as last aforesaid; and although the said plaintiffs have always been ready and willing to accept and receive the residue of said last goods, and to pay for the same at the rate or price aforesaid, to wit, at the southern district of New York, whereof the said defendants have always had notice; and although afterwards, to wit, on the thirtieth day of September, in the year of our Lord one thousand eight hundred and fifty-three, the plaintiffs did demand of the defendants the delivery of the residue of said goods to them, the plaintiffs, to wit, at Providence, in the State of Rhode Island, to wit, in the southern district of New York aforesaid; yet the said defendants, not regarding their said last promise and undertaking, but contriving and intending to deceive and defraud the said plaintiffs in this behalf, did not nor would within the time last aforesaid, or at any time afterwards, deliver four thousand five hundred and ten gross of Wilson's screws, the residue of the said last goods, or any part thereof, to the said plaintiffs, to wit, at the southern district of New York aforesaid, or elsewhere, but wholly neglected and refused so to do, whereby the said plaintiffs have lost and been deprived of divers great gains and profits which might and otherwise would have arisen and accrued to them from the delivery of the said last goods to the said plaintiffs as aforesaid, to wit, at the southern district of New York aforesaid,

VIII. And for that whereas, to wit, on the sixth day of November, in the year of our Lord one thousand eight hundred and fifty-two, at the southern district of New York, in consideration that the plaintiffs, at the instance and request of the defendants, had then and there bought of the said defendants a large quantity, to wit, other nine thousand nine hundred and ten gross of Wilson's screws, at and for a certain price then and there agreed upon between them, they, the defendants, undertook and then *and then* and there faithfully promised the plaintiffs well and truly to deliver to them the said last nine thousand nine hundred and ten gross of screws in a reasonable time after the day and year last aforesaid; and the plaintiffs, in fact, say, that although a reasonable time for the defendants to deliver the said last screws to the plaintiffs had long since elapsed; and although the plaintiffs afterwards, to wit, at the southern district of New York, at the expiration of such reasonable time, were, and always have been, ready and willing to accept and receive the said last mentioned nine thousand nine hundred and ten gross of screws of and from the said defendants, and to pay the defendants for the same according to the terms of the said last sale, yet the said defendants, not regarding their said last mentioned promise and undertaking, although often requested to deliver the same to the plaintiffs, did not at the expiration of such reasonable time, or at any other time, before or since, deliver to the said plaintiffs the said last mentioned

nine thousand nine hundred and ten gross of Wilson's screws, or any part thereof, but have hitherto wholly neglected and refused, and still do neglect and refuse, so to do, whereby the plaintiffs have lost and been deprived divers great gains and profits, which might and otherwise would have arisen and accrued to them from the delivery of the said last mentioned nine thousand nine hundred and ten gross of Wilson's screws to the plaintiffs, to wit, at the southern district of New York.

IX. And for that whereas also, to wit, on the sixth day of November, in the year of our Lord one thousand eight hundred and fifty-two, to wit, at the southern district of New York, in consideration that the plaintiffs, at the instance and request of the defendants, had then and there bought of the said defendants a certain large quantity, to wit, other nine thousand nine hundred and ten gross of Wilson's screws, at and for a certain price then and there agreed upon between them, they, the defendants, undertook, and then and there faithfully promised the plaintiffs, well and truly, to deliver to them the said last nine thousand nine hundred and ten gross of Wilson's screws, when they, the defendants, should be thereunto afterwards requested; and the plaintiffs in fact say, that although the plaintiffs afterwards, to wit, on the 30th day of September, in the year one thousand eight hundred and fifty-two, at Providence, in the State of Rhode Island, to wit, at the southern district of New York aforesaid, requested the defendants to deliver to them the said last mentioned nine thousand nine hundred and ten gross of Wilson's screws, and were then and there ready and willing to pay said defendants for the same according to the terms of the said last sale, and although the plaintiffs were then and there ready and willing, and offered to accept and receive the said last mentioned nine thousand nine hundred and ten gross of Wilson's screws of and from the said defendants; yet the defendants, not regarding their said last mentioned promise and undertaking, did not, when they were requested as aforesaid, or at any other time before or since, deliver to the plaintiffs the said last mentioned nine thousand nine hundred and ten gross of Wilson's screws, or any part thereof, but have hitherto wholly neglected and refused, and still do refuse to do, whereby the plaintiffs have lost and been deprived of divers great gains and profits which would have arisen and accrued to them from the delivery of the said last mentioned nine thousand nine hundred and ten gross of Wilson's screws to the plaintiffs, to wit, at the southern district of New York aforesaid.

X. And for that whereas also, heretofore, to wit, on the nineteenth day of November, in the year of our Lord one thousand eight hundred and fifty-two, to wit, at the southern district of New York, the said plaintiffs, at the special instance and request of the defendants, bargained with the said defendants to buy of the said de-

fendants, and the said defendants then and there sold to the plaintiffs, a large quantity of other goods, to wit, one thousand eight hundred and eleven other gross of screws, to be furnished and delivered at the option of the defendants of New England screws, at and for a certain price or sum then and there agreed upon between them, to wit, at forty per cent. discount from the fixed or list prices, or of Wilson's screws, at and for a certain other price or sum then and there agreed upon between them, to wit, at forty-five per cent. discount from the fixed or list prices, being fixed or definite prices, at a discount from which goods of that nature are usually sold, to be delivered by the said defendants to the said plaintiffs in about two months after the day and year last aforesaid, to wit, in two months from and after the said nineteenth day of November, one thousand eight hundred and fifty-two, and to be paid for by the plaintiffs to the defendants at the expiration of six months from and after the delivery of the said goods, and in consideration thereof, and that the said plaintiffs, at the like special instance and request of the said defendants, had then and there undertaken and faithfully promised the said defendants to accept and receive the said last goods, and to pay them for the same at the rate or prices aforesaid, they, the said defendants, undertook, and then and there faithfully promised the said plaintiffs, to deliver the said last goods to the said plaintiffs as aforesaid; and although the time for the delivery of the said last goods as aforesaid hath long since expired; and although the said defendants afterwards, to wit, on the ninth day of February, one thousand eight hundred and fifty-three, to wit, at the southern district of New York aforesaid, did deliver to the plaintiffs one thousand three hundred and fifty-four gross of screws, part and parcel of the goods so sold as last aforesaid; and although the said plaintiffs have always been ready and willing to accept and receive the residue of said last goods, and to pay for the same at the rate or price as aforesaid, to wit, at the southern district of New York aforesaid, of all which the defendants have always had notice, although afterwards, to wit, on the twentieth day of September, in the year of our Lord one thousand eight hundred and fifty-three, the plaintiffs did demand of the defendants the delivery of the residue of said last goods to them, the plaintiffs, to wit, at Providence, in the State of Rhode Island, to wit, at the southern district of New York aforesaid; yet the said defendants, not regarding their said last promise and undertaking, but contriving and intending to deceive and defraud the plaintiffs in this behalf, did not nor would within the time aforesaid, or at any time afterwards, deliver four hundred and fifty-seven gross of screws, the residue of said last mentioned goods, or any part thereof, to the plaintiffs, to wit, at the southern district of New York, or elsewhere, but wholly neglected and refused, and still do refuse so to do, whereby the said plaintiffs have lost and been deprived of divers

great gains and profits which might and otherwise would have arisen and accrued to them from the delivery of the said last goods to the said plaintiffs as aforesaid, to wit, at the southern district of New York aforesaid.

XI. And for that whereas also, the said defendants afterwards, to wit, on the nineteenth day of November, in the year of our Lord one thousand eight hundred and fifty-two, to wit, at the southern district of New York, in consideration that the plaintiffs, at the instance and request of the defendants, had then and there bought of the defendants a large quantity, to wit, other one thousand eight hundred and eleven gross of screws at and for a certain price then and there agreed upon between them, they, the defendants, undertook and then and there faithfully promised the plaintiffs well and truly to deliver to the said plaintiffs the said last one thousand eight hundred and eleven gross of screws at a certain time then and there agreed upon between them, to wit, in about two months (to wit, within two months) from and after the said nineteenth day of November, one thousand eight hundred and fifty-two, to wit, at the southern district of New York aforesaid; and the plaintiffs in fact say, that although the time for the delivery of the said last goods as aforesaid *have* long since elapsed, and although the said plaintiffs afterwards, to wit, at the southern district of New York, at the expiration of the time last aforesaid, were and always have been ready and willing to accept and receive the said last mentioned one thousand eight hundred and eleven gross of screws of and from the defendants, and to pay the defendants according to the terms of the said last sale, yet the said defendants, not regarding their said last promises and undertaking, did not, although often requested to deliver the same to the plaintiffs, at the expiration of such time so agreed upon for the delivery of said last mentioned one thousand eight hundred and eleven gross of screws, or at any other time before or since, deliver*ed* to the said plaintiffs said last mentioned one thousand eight hundred and eleven gross of screws, or any part thereof, but have hitherto wholly neglected and refused, and still do refuse so to do, whereby the plaintiffs have lost and been deprived of divers great gains and profits, which might and otherwise would have arisen and accrued to them from the delivery of the said last mentioned one thousand eight hundred and eleven gross of screws to the plaintiffs, to wit, at the southern district of New York aforesaid.

XII. And for that whereas also, to wit, on the nineteenth day of November, in the year of our Lord one thousand eight hundred and fifty-two, to wit, at the southern district of New York, in consideration that the plaintiffs, at the instance and request of the defendants, had then and there bought of the said defendants a certain other large quantity, to wit, other one thousand eight hundred and eleven gross of screws, at and for a certain price then and

there agreed upon between them, they, the defendants, undertook and then and there faithfully promised the plaintiffs well and truly to deliver to them the said last one thousand eight hundred and eleven gross whenever they, the defendants, should be thereunto afterwards requested; and the plaintiffs in fact say, that although the plaintiffs afterwards, to wit, on the thirtieth day of September, in the year one thousand eight hundred and fifty-three, at Providence, in the State of Rhode Island, to wit, at the southern district of New York aforesaid, requested the defendants to deliver to them, the plaintiffs, the said last mentioned one thousand eight hundred and eleven gross of screws, and were then and there ready and willing to pay the said defendants for the same according to the terms of the said last sale; and although the plaintiffs were then and there ready and willing and offered to accept and receive the said last mentioned one thousand eight hundred and eleven gross of screws of and from the said defendants; yet the defendants, not regarding their said last mentioned promise and undertaking, did not when they were requested as last aforesaid, or at any other time before or since, deliver to the plaintiffs the said last mentioned one thousand eight hundred and eleven gross of screws, or any part thereof, but have hitherto wholly neglected and refused, and still do refuse so to do, whereby the plaintiffs have lost and been deprived of divers great gains and profits, which would have arisen and accrued to them from the delivery of the said last mentioned one thousand eight hundred and eleven gross of screws to the plaintiffs, to wit, at the southern district of New York.

XIII. And for that whereas also, heretofore, to wit, on the seventeenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, to wit, at the southern district of New York, the said plaintiffs, at the special instance and request of the said defendants, bargained with the said defendants, to buy of the said defendants, and the said defendants then and there sold to the plaintiffs, a large quantity of other goods, to wit, other twenty thousand gross of screws, to wit, ten thousand gross of New England screws, and ten thousand gross of Wilson's screws, at and for a certain price or sum then and there agreed upon between them, to wit, at the market price or value of the said last screws, at the time of the delivery thereof to the plaintiffs, to be delivered by the said defendants to the said plaintiffs in course, (to wit, so soon as the said defendants should be able to deliver the same, after delivering the screws ordered of them by other persons, and which orders had been accepted prior to said seventeenth day of Feb'y, one thousand eight hundred and fifty-three,) and to be paid for by the plaintiffs to the defendants, at the expiration of six months from and after the delivery of the said last goods, and in consideration thereof, and that the said plaintiffs, at the like special instance and request of the said defendants, had then and there undertaken,

and faithfully promised the said defendants to accept and receive the said last goods, and to pay for them at the rate or price last aforesaid, they, the said defendants, undertook and faithfully promised the said plaintiffs to deliver the said last goods to the said plaintiffs as last aforesaid *to the said plaintiffs as last aforesaid;* and although the time for the delivery of the said last goods as aforesaid has long since elapsed, and although the defendants could have delivered said last goods in course as aforesaid, to wit, on the seventeenth day of June, one thousand eight hundred and fifty-three, and although the said plaintiffs have always been ready and willing to accept and receive the said last goods, and to pay for the same at the rate or price aforesaid, to wit, at the southern district of New York aforesaid, whereof the said defendants have have always had notice, and although afterwards, to wit, on the thirtieth day of September, in the year of our Lord one thousand eight hundred and fifty-three, the plaintiffs did demand of the defendants the delivery of the said last goods to them, the plaintiffs, to wit, at Providence, in the State of Rhode Island, to wit, in the southern district of New York aforesaid, yet the said defendants, not regarding their said last promise and undertaking, and intending to deceive and defraud the said plaintiffs in this behalf, did not, nor would within the time aforesaid, or at any other time afterwards, deliver the said last goods, or any part thereof, to the plaintiffs, to wit, at the southern district of New York aforesaid, or elsewhere, but wholly neglected and refused, and still do refuse so to do, whereby the said plaintiffs have lost and been deprived of divers great gains and profits which might and otherwise would have arisen and accrued to them from the delivery of the said last goods to the plaintiffs as aforesaid, to wit, at the southern district of New York aforesaid.

XIV. And for that whereas also, to wit, on the seventeenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, to wit, at the southern district of New York, in consideration that the plaintiffs, at the instance and request of the said defendants, had then and there bought of the said defendants a large quantity, to wit, other twenty thousand gross of screws, to wit, ten thousand gross of New England screws and ten thousand gross of Wilson's screws, at and for a certain price then and there agreed upon between them, they, the said defendants, undertook and then and there faithfully promised the plaintiffs well and truly to deliver to them the said last twenty thousand gross of screws, in a reasonable time after the day and year last aforesaid; and the plaintiffs in fact say, that although a reasonable time for the defendants to deliver the said last screws to the plaintiffs hath long since elapsed, and although the plaintiffs afterwards, to wit, at the southern district of New York, at the expiration of such reasona-

ble time, were and always have been ready and willing to accept and receive the said last mentioned twenty thousand gross of screws of and from the said defendants, and to pay the defendants for the same according to the terms of the said last sale; yet the said defendants, not regarding their said last mentioned promise and undertaking, although often requested to deliver the same to the plaintiffs, did not at the expiration of such reasonable time, or at any other time before or since, deliver to the said plaintiffs the said last mentioned twenty thousand gross of screws, or any part thereof, but have hitherto wholly neglected and refused, and still do refuse, so to do, whereby the plaintiffs have lost and been deprived of divers great gains and profits, which might and otherwise would have arisen and accrued to them from the delivery of the said last mentioned twenty thousand gross of screws to the plaintiffs, to wit, at the southern district of New York aforesaid.

XV. And for that whereas also, to wit, on the seventeenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, to wit, at the southern district of New York, in consideration that the plaintiffs, at the instance and request of the defendants, had then and there bought of the said defendant a certain large quantity, to wit, other twenty thousand gross of screws, (to wit, ten thousand gross of New England screws and ten thousand gross of Wilson's screws,) at and for a certain price then and there agreed upon between them, they, the said defendants, undertook and then and there faithfully promised the plaintiffs well and truly to deliver to them the said last twenty thousand gross of screws, whenever they, the defendants, should be thereunto afterwards requested; and the plaintiffs in fact say, that although the plaintiffs afterwards, to wit, on the thirtieth day of September, one thousand eight hundred and fifty-three, at Providence, in the State of Rhode Island, to wit, at the southern district of New York aforesaid, requested the defendants to deliver to them the said last mentioned twenty gross of screws, and were then and there ready and willing to pay the said defendants for the same, according to the terms of the said last sale; and although the plaintiffs were then and there ready and offered to accept and receive the said last mentioned twenty thousand gross of screws of and from the said defendants; yet the defendants, not regarding their said last mentioned promise and undertaking, did not when they were requested as last aforesaid, or at any other time before or since, deliver to the plaintiffs the said last mentioned twenty thousand gross of screws, or any part thereof, but have hitherto wholly neglected and refused, and still do refuse, so to do, whereby the plaintiffs have lost and been deprived of divers great gains and profits which would have arisen and accrued to them from the delivery of the said last mentioned twenty thousand gross of screws to the plaintiffs, to wit, at the southern district of New York aforesaid.

XVI. And for that whereas also, to wit, on the nineteenth day of April, in the year one thousand eight hundred and fifty-three, to wit, at the southern district of New York, the said plaintiffs, at the special instance and request of the defendants, bargained with the said defendants to buy of the said defendants, and the said defendants then and there sold to the plaintiffs, a large quantity of other goods, to wit, other twenty thousand gross of screws, to be furnished and delivered at the option of the defendants of New England screws or of Wilson's screws, at and for a certain price or sum then and there agreed upon between them, to wit, at the maker's price or value of the said last screws at the time of the delivery thereof to the plaintiffs, to be delivered by the defendants to the said plaintiffs in their turn, to wit, as soon as the defendants should be able to deliver the same after delivering the screws ordered of them by other persons prior to the day and year last aforesaid, and which orders had been accepted by them, and as soon as the defendants should be able to deliver the same consistently with their previous obligations to their other customers—that is to say, to their purchasers from them—and to be paid for by the plaintiffs to the defendants at the expiration of six months from and after the delivery of the said last goods, and in consideration thereof, and that the said plaintiffs, at the like special instance and request of the said defendants, had then and there undertaken and faithfully promised the said defendants to accept and receive the said last goods, and to pay for them at the rate and price last aforesaid, they, the said defendants, undertook and faithfully promised the said plaintiffs to deliver the said last goods to the said plaintiffs as last aforesaid; and although the time for the delivery of the said last goods as aforesaid has long since elapsed, and although the defendants could have delivered said last mentioned goods in their turn, and although the defendants were able to deliver the same consistently with their previous obligations to their other customers, to wit, on the sixteenth day of August, one thousand eight hundred and fifty-three, and although the said plaintiffs have always been ready and willing to accept and receive the said last goods, and to pay for the same at the rate or price aforesaids, to wit, at the southern district of New York aforesaid, whereof the said defendants have always had notice, and although afterwards, to wit, on the thirtieth day of September, in the year one thousand eight hundred and fifty-three, the plaintiffs did demand of the said defendants the delivery of the said last goods to them, the plaintiffs, to wit, at Providence, in the State of Rhode Island, to wit, in the southern district of New York aforesaid, yet the said defendants, not regarding their said last promise and undertaking, but contriving and intending to deceive and defraud the said plaintiffs in this behalf, did not nor would within the time aforesaid, or at any other time afterwards, deliver the said last

goods, or any part thereof, to the plaintiffs, to wit, at the southern district of New York aforesaid, or elsewhere, but wholly neglected and refused, and still do refuse so to do, whereby the said plaintiffs have lost and been deprived of divers great gains and profits which might and otherwise would have arisen and accrued to them from the delivery of the said last goods to the plaintiffs as aforesaid, to wit, at the southern district of New York aforesaid.

XVII. And for that whereas also, to wit, on the nineteenth day of April, in the year of our Lord one thousand eight hundred and fifty-three, to wit, at the southern district of New York, in consideration that the said plaintiffs, at the instance and request of the said defendants, had then and there bought of the said defendants a large quantity, to wit, other twenty thousand gross of screws, to be furnished and delivered at the option of the defendants of New England screws or of Wilson's screws, at and for a certain price then and there agreed upon between them, they, the said defendants, undertook and then and there faithfully promised the plaintiffs well and truly to deliver to them the said last twenty thousand gross of screws in a reasonable time after the day and year last aforesaid; and the plaintiffs in fact say, that although a reasonable time for the defendants to deliver the said last screws to the plaintiffs hath long since elapsed, and although the said plaintiffs afterwards, to wit, at the southern district of New York, at the expiration of such reasonable time, were and always have been ready and willing to accept and receive the said last mentioned twenty thousand gross of screws of and from the said defendants, and to pay the defendants for the same according to the terms of the said last sale, yet the said defendants, not regarding their said last mentioned promise and undertaking, although often requested to deliver the same to the plaintiffs, did not at the expiration of such reasonable time, or at any other time before or since, deliver to the said plaintiffs the said last mentioned twenty thousand gross of screws or any part thereof, but have hitherto wholly neglected and refused, and still do refuse so to do, whereby the plaintiffs have lost and been deprived of divers great gains and profits, which might and otherwise would have arisen and accrued to them from the delivery of the said last mentioned twenty thousand gross of screws to the plaintiffs, to wit, at the southern district of New York aforesaid.

XVIII. And for that whereas also, to wit, on the nineteenth day of April, in the year of our Lord one thousand eight hundred and fifty-three, to wit, at the southern district of New York, in consideration that the said plaintiffs, at the special instance and request of the defendants, had then and there bought of the said defendants a certain large quantity, to wit, other twenty thousand gross of screws, at and for a certain price then and there agreed

upon between them, they, the said defendants, undertook and then and there faithfully promised the plaintiffs well and truly to deliver to them the said last twenty thousand gross of screws, whenever they, the defendants, should be thereunto afterwards requested; and the plaintiffs in fact say, that although the plaintiffs afterwards, to wit, on the thirtieth day of September, in the year one thousand eight hundred and fifty-three, at Providence, in the State of Rhode Island, to wit, at the southern district of New York aforesaid, requested the defendants to deliver to them the said last mentioned twenty thousand gross of screws, and were then and there ready and willing to pay the said defendants for the same, according to the terms of the said last sale; and although the plaintiffs were then and there ready and willing and offered to accept and receive the said last mentioned twenty thousand gross of screws of and from the said defendants, yet the said defendants, not regarding their said last mentioned promise and undertaking, did not, when they were requested as last aforesaid, or at any other time before or since, deliver to the plaintiffs the said last mentioned twenty thousand gross of screws, or any part thereof, but have hitherto wholly neglected and refused, and still do refuse so to do; whereby the plaintiffs have lost and been deprived of divers great gains and profits, which would have arisen and accrued to them from the delivery of the said last mentioned twenty thousand gross of screws to the plaintiffs, to wit, at the southern district of New York aforesaid.

XIX. And whereas, also, the said defendants afterwards, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-four, to wit, at the southern district of New York aforesaid, were indebted to the said plaintiffs in the said further sum of ten thousand dollars of like lawful money of the United States of America, for money by the said defendants before that time had and received, to and for the use of the said plaintiffs; and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said last mentioned sum of money, when the defendants should be thereunto afterwards requested: And whereas, also, the said defendants afterwards, to wit, on the day and year, and at the place last aforesaid, accounted together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendants then and there were found to be in arrear and indebted to the said plaintiffs in the further sum of ten thousand dollars of like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said

defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place last aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested; nevertheless, the said defendants (although often requested) have not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs, the said defendants have refused, and still do refuse, to the damage of the said plaintiffs of ten thousand dollars, and therefore the plaintiffs bring suit, &c.

And now, at this day, that is to say, on the sixth of October, as yet of the term of April, one thousand eight hundred and fifty-five, to which day the said defendants had leave to imparl to the said declaration of the said plaintiffs, and then to answer the same before the judges aforesaid, at the City Hall, in the city of New York, come as well the said plaintiffs, by their attorneys aforesaid, as the said defendants, by Harrington & Dodge, their attorneys.

Whereupon, the issue above joined is ordered by the court to be tried at a circuit court of the United States aforesaid, to be held at the City Hall, in the city of New York, in and for the southern district of New York, on the first Monday of April, one thousand eight hundred and fifty-five.

The same day is given to the parties aforesaid before the judges aforesaid, at the same place, at which day last mentioned, before the judges aforesaid, come the parties aforesaid, by their respective attorneys aforesaid, and the jurors of the jury summoned to try the said issue being called, also come; and the jurors of the jury being thereupon chosen, tried, and sworn, to speak the truth in the matters within contained, say, upon their oath, that the defendants are not guilty of the several grievances within laid to their charge in manner and form as the plaintiffs have within complained against them.

And because the said court, before the aforesaid judges thereof now here, is not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid in this same court before the judges thereof, until the first Monday of April, in the term of April, one thousand eight hundred and fifty-seven, at the place aforesaid; and the same day is given to the same parties, at the same place, to hear the judgment of the court thereupon.

At that day and place last aforesaid, before the judges aforesaid, come the parties aforesaid by their respective attorneys aforesaid.

Whereupon, all and singular the premises being seen, and by the court here fully understood, and mature deliberation being

thereupon had, it appears to the said court that the verdict aforesaid, in form aforesaid given, is in all respects good and valid in law, anything by the said plaintiffs alleged to the contrary thereof in anywise notwithstanding.

Therefore it is considered that the said plaintiffs take nothing by their said declaration, but that they be in mercy, &c., and that the said defendants do go thereof without day, &c.

And it is further considered by the said court now here to recover against the said plaintiffs eighty dollars and twenty-one cents for their costs and charges by and about their defence in this behalf laid out and expended by the said court now here adjudged to the said defendants, and with their assent, and that the said defendants have execution thereof.

Judgment signed this 11th Dec., 1857.

R. E. STILWELL,
Dep. Clerk.

Afterwards, to wit, at a circuit court of the United States for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the 12th day of May, 1855, before his Honor Samuel Nelson, one of the justices of this court, according to the form of the statute in such case made and provided, the aforesaid issue so joined between the said parties as aforesaid came on to be tried by a jury of the southern district of New York as aforesaid, for that purpose duly empanelled, good and lawful men of the said district.

At which day came there as well the said plaintiffs as the said defendants, by their respective attorneys aforesaid, and the jurors of the jury aforesaid empanelled to try the said issue being called, also came and were then and there in due manner chosen and sworn to try the said issue; and upon the trial of the said issue the counsel for the said plaintiffs, to maintain and prove the said issue on their part, (the partnership of the plaintiffs and the incorporation of the defendants being admitted,) read in evidence a letter, (produced by the defendants upon notice,) bearing date the 30th September, 1852, and it being admitted that it was received by the company from the plaintiffs, as follows:

NEW YORK, *Sept.* 30, 1852.

DEAR SIR: Presuming from the long delay in executing our orders we give below a memorandum of the balance due on our order of June 29th:

$\frac{3}{8}$. 200, 490, 500, 170, $\frac{1}{2}$, 190, 400, 100, 80, 30, 20, $\frac{3}{4}$, 30, 190.
2 3 4 5 2 3 4 5 6 8 5 6.

100, 50, 20, 30.
8 11 12 13.

⅞. 20, 1, 10, 1¼, 30, 10, 1½, 40, 1¾, 30, 15, 2½, 10, 17, 2, 10,
7 13 16 18 16 16 18 16 18 19 20

6, 3, 63.
22 22.

August 18th.

½. 50, 50, ⅝, 50, 70, 150, 190, 90, 10, ¾, 100, 70, 100, 1, 220, 20.
6 7 4 5 6 7 8 9 6 7 8 9 13.

1¼. 40, 1¾, 15, 20, 1½, 50, 40, 2, 20, 25, 30, 10, 2½, 15, 20.
15 16 17 11 15 16 18 19 20 16 19.

3. 8, 10.
18 19.

Please add to the above, and send all you can at once, and the balance soon after as possible, either N. E. or Wilson's—

⅜. 100, 200, 200, ½, 100, 100, 400, 200, 50, 50.
2 5 6 2 3 4 5 6 7.

⅝. 50, 150, 350, 300, 200, 100, 100, ¾, 70, 400, 300, 400, 300,
4 5 6 7 8 9 10 5 7 8 9 10

150, 80.
11 12.

⅞. 30, 50, 60, 60, 50, 40, 1, 100, 200, 500, 100, 200, 100, 100, 100.
7 8 9 10 11 12 6 7 8 9 10 11 12 14.

1¼. 50, 200, 300, 100, 100, 60, 20, 1½, 50, 50, 30, 10, 40, 1¾,
8 9 10 11 14 15 16 13 14 15 16 17

50, 50, 20, 30.
14 15 16 17.

2. 50, 2½, 20, 3, 10, 10, 10, 10, 3½, 5, 5, 5, 5.
15 18 18 19 21 22 18 20 22 24.

4. 5, 5, 5.
20 22 24.

We would call your attention to the fact that, of our order June 29th, for 2,370 gro. ⅜ and ½ screws, you have sent us but 190 gross, who get them all. This is about 1¼ per cent. on our order after three months. Please send us a sample card and a lot of price lists. We have never had a card. We have not a gross of screws under inch in stock. Respectfully yours,

BLIVEN & MEAD.

To the NEW ENGLAND SCREW CO.

The counsel for the plaintiffs also showed to the witness a letter, produced by the counsel of the defendants upon notice, bearing date the 5th October, 1852, and the witness then testified that the said last mentioned letter had been received by the plaintiffs from the defendants, and it was then read in evidence, as follows:

NEW YORK, *Oct.* 5, 1852.

New England Screw Co. in account with Bliven & Mead.

July 28. By invoice	435	84
Aug. 18. " "	16	80
Due Jan'y 30, 1853	452	64
Interest from Oct. 5, 1852, to Jan'y 30, -'53—117 days, at the rate of 5 per cent. 6 mos	14	69
	437	95

GENT: We enclose our check on City Bank for four hundred and thirty-seven dollars $\frac{95}{100}$ to pay your bills of July 28th and Aug. 18th, as per above statement.

Yours, respectfully,

BLIVEN & MEAD.

Please hurry up our orders, as we are suffering.

The counsel for the plaintiffs then produced, and proved, and read in evidence a letter from the defendants to the plaintiffs, marked No. 1, bearing date the 7th October, 1852, as follows:

PROVIDENCE, *Oct.* 7, 1852.

BLIVEN & MEAD, *New York.*

GENT: Your favor of the 5th inst. is just received. On the 21st September, we drew on you at 6 months, from the average of the account, for 1,105$\frac{24}{100}$ dollars, and the draft went forward for acceptance at once, as we suppose. We therefore return your check, and will thank you to honor the draft when presented, if it has not already been accepted.

We will hereafter wait for you to remit, if you wish to pay cash. The orders to which you refer will be taken up at the earliest possible day.

Yours, truly,

NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JONA. L. SLOCUM.

The counsel for the plaintiffs then produced read in evidence a letter from the plaintiffs to the defendants, produced upon notice by the defendants' counsel, as follows:

NEW YORK, *Oct.* 15, 1852.

MR. : DEAR SIR: Anticipating a short supply of gimlet P. screws for the next season, and to avoid the great inconvenience we now suffer in consequence of your not filling our orders, we

thus early send you the annexed order, to be furnished the 15th March and the 15th of April next, at six months from these dates, at the present discount, subject to any reduction you may make before or at that time.

This is in addition to orders now in hand, which we trust you will now send without further delay, as most of the goods are sold to go through our western lakes, and unless sent within a week, will be too late for shipment. Advise us of the acceptance of the order.

Respectfully, yours,

BLIVEN & MEAD.

To the NEW ENGLAND SCREW CO.

Order from Bliven & Mead for gimlet-point screws, half each, Wilson's, and premium, to be delivered, half each, 15th March and 15th of April next.

$\frac{3}{8}$ 100, 200, 200, 100, 50, $\frac{1}{2}$, 100, 300, 300, 200, 100, 50.
2 3 4 5 6 2 3 4 5 6 7.

$\frac{5}{8}$ 100, 300, 300, 300, 50, 50, $\frac{3}{4}$, 200, 300, 550, 400, 300, 200,
5 6 7 8 9 10 6 7 8 9 10 11
200, 100.
12 13.

1 200, 300, 400, 500, 600, 400, 200, 100, 50, 50, $1\frac{1}{4}$, 100, 200,
6 7 8 9 10 11 12 13 14 15 8 9
300, 300, 300.
10 11 12.

$1\frac{1}{4}$ 200, 200, 100, 50, 50, $1\frac{1}{2}$, 100, 200, 300, 300, 200, 100, 100,
13 14 15 16 17 10 11 12 13 14 15 16
50, 20.
17 18.

2 60, 100, 120, 100, 100, 50, 50, 10, 10, $2\frac{1}{2}$, 20, 20, 30, 30, 30,
12 13 14 15 16 17 18 19 20 14 15 16 17 18
20, 10.
19 20.

3 20, 20, 20, 30, 30, 20, 50, 20, 30, $3\frac{1}{2}$, 10, 10, 10, 10.
16 17 18 19 20 21 22 23 24 18 20 22 24.

4 $\frac{5}{22}$. $\frac{5}{24}$.

The counsel for the defendants also proved and read in evidence a letter from the plaintiffs to the defendants, marked No. 2, dated 16 Oct., 1852, as follows:

PROVIDENCE, *Oct.* 16, 1852.

BLIVEN & MEAD, *New York.*

GENT: Your esteemed favor of the 15th inst. is at hand, and your order entered to be executed at the times named. We shall

do all we can to get your orders off that we now have in hand before navigation closes on the canals; but as we have a great many orders from other parties in the same condition, we can only take them up in course.

Yours truly,
NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JONA. L. SLOCUM.

We notice the small sizes in your order are more than the proportion that we make of those sizes. In accepting your order, it must be understood that we furnish the sizes in proportion as we make them.

N. E. SCREW CO.

The counsel for the plaintiffs then produced and read in evidence a letter from the plaintiffs to the defendants, marked D, bearing date the 4th November, 1852, as follows:

NEW YORK, *Nov.* 4, 1852.

GENT: Please place the following order upon your books, to be filled as fast as possible, at 55 p. c. in addition to our order of the 15th of October, and in addition to all previous orders.

You are certainly not filling our old orders in their turn. We have not a gross of salable gimlet-point screws in our store; do send us a lot by steamboat to-morrow.

Wilson's Gimlet-point screws.

$\frac{1}{2}$. 100, 200, 200, 100, $\frac{5}{8}$, 100, 200, 300, 200, 100, 50.
2 3 4 5 4 5 6 7 8 9.

$\frac{3}{4}$. 100, 300, 300, 500, 400, 200, 100, 50, 1, 100, 200, 400, 500,
5 6 7 8 9 10 11 12 6 7 8 9
600, 300, 200.
10 11 12.

1. 100, 30, 50, 30, $1\frac{1}{4}$, 100, 200, 400, 300, 300, 200, 100, 100,
12 14 15 16 8 9 10 11 12 13 14 15
50, 30, 30.
16 17 18.

$1\frac{1}{2}$. 150, 200, 200, 200, 200, 150, 100, 50, 50, $1\frac{3}{4}$, 50, 40, 40.
10 11 12 13 14 15 16 17 18 14 15 16.

$1\frac{3}{4}$. 30, 30, 30, 30, 2, 50, 50, 100, 100, 100, 50, 50.
17 18 19 20 12 13 14 15 16 17 18.

Please advise us by return mail how long we shall probably have to wait for the whole order.

Resp'tly, yours,
BLIVEN & MEAD.

thus early send you the annexed order, to be furnished the 15th March and the 15th of April next, at six months from these dates, at the present discount, subject to any reduction you may make before or at that time.

This is in addition to orders now in hand, which we trust you will now send without further delay, as most of the goods are sold to go through our western lakes, and unless sent within a week, will be too late for shipment. Advise us of the acceptance of the order.

Respectfully, yours,

BLIVEN & MEAD.

To the NEW ENGLAND SCREW Co.

Order from Bliven & Mead for gimlet-point screws, half each, Wilson's, and premium, to be delivered, half each, 15th March and 15th of April next.

$\frac{3}{8}$ 100, 200, 200, 100, 50, $\frac{1}{2}$, 100, 300, 300, 200, 100, 50.
2 3 4 5 6 2 3 4 5 6 7.

$\frac{5}{8}$ 100, 300, 300, 300, 50, 50, $\frac{3}{4}$, 200, 300, 550, 400, 300, 200,
5 6 7 8 9 10 6 7 8 9 10 11
200, 100.
12 13.

1 200, 300, 400, 500, 600, 400, 200, 100, 50, 50, $1\frac{1}{4}$, 100, 200,
6 7 8 9 10 11 12 13 14 15 8 9
300, 300, 300.
10 11 12.

$1\frac{1}{4}$ 200, 200, 100, 50, 50, $1\frac{1}{2}$, 100, 200, 300, 300, 200, 100, 100,
13 14 15 16 17 10 11 12 13 14 15 16
50, 20.
17 18.

2 60, 100, 120, 100, 100, 50, 50, 10, 10, $2\frac{1}{2}$, 20, 20, 30, 30, 30,
12 13 14 15 16 17 18 19 20 14 15 16 17 18
20, 10.
19 20.

3 20, 20, 20, 30, 30, 20, 50, 20, 30, $3\frac{1}{2}$, 10, 10, 10, 10.
16 17 18 19 20 21 22 23 24 18 20 22 24.

4 $\frac{5}{22}$. $\frac{5}{24}$.

The counsel for the defendants also proved and read in evidence a letter from the plaintiffs to the defendants, marked No. 2, dated 16 Oct., 1852, as follows:

PROVIDENCE, *Oct.* 16, 1852.

BLIVEN & MEAD, *New York.*

GENT: Your esteemed favor of the 15th inst. is at hand, and your order entered to be executed at the times named. We shall

4762

do all we can to get your orders off that we now have in hand before navigation closes on the canals; but as we have a great many orders from other parties in the same condition, we can only take them up in course.

Yours truly,
NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JONA. L. SLOCUM.

We notice the small sizes in your order are more than the proportion that we make of those sizes. In accepting your order, it must be understood that we furnish the sizes in proportion as we make them.

N. E. SCREW CO.

The counsel for the plaintiffs then produced and read in evidence a letter from the plaintiffs to the defendants, marked D, bearing date the 4th November, 1852, as follows:

NEW YORK, *Nov.* 4, 1852.

GENT: Please place the following order upon your books, to be filled as fast as possible, at 55 p. c. in addition to our order of the 15th of October, and in addition to all previous orders.

You are certainly not filling our old orders in their turn. We have not a gross of salable gimlet-point screws in our store; do send us a lot by steamboat to-morrow.

Wilson's Gimlet-point screws.

½.	100,	200,	200,	100,	⅝,	100,	200,	300,	200,	100,	50.	
	2	3	4	5		4	5	6	7	8	9.	
¾.	100,	300,	300,	500,	400,	200,	100,	50,	1,	100,	200,	400, 500,
	5	6	7	8	9	10	11	12		6	7	8 9
	600,	300,	200.									
	10	11	12.									
1.	100,	30,	50,	30,	1¼,	100,	200,	400,	300,	300,	200,	100, 100,
	12	14	15	16		8	9	10	11	12	13	14 15
	50,	30,	30.									
	16	17	18.									
1½.	150,	200,	200,	200,	200,	150,	100,	50,	50,	1¾,	50,	40, 40.
	10	11	12	13	14	15	16	17	18		14	15 16.
1¾.	30,	30,	30,	30,	2,	50,	50,	100,	100,	100,	50,	50.
	17	18	19	20		12	13	14	15	16	17	18.

Please advise us by return mail how long we shall probably have to wait for the whole order.

Resp'tly, yours,
BLIVEN & MEAD.

P. S. You have only to give us a hint to discount our bill at the rate of 5 p. c. 6 months, when the risk is large enough.

To the NEW ENGLAND SCREW CO.

The counsel for the plaintiffs then produced and read in evidence a letter from the defendants to the plaintiffs, bearing date the 6th Nov'r, 1852, as follows:

PROVIDENCE, *Nov.* 6, 1852.

BLIVEN & MEAD, *New York.*

GENT: Your esteemed favor of the 4th inst. is at hand, and the order is entered, to be taken up in due course. We think we shall reach it in about 2 months. We notice your remarks about paying cash. We feel no anxiety about the magnitude of your account, and as money is never worth 10 per cent. per annum to us, we would rather have you settle at any time by note or by acceptance, than by cash. We must remark in regard to Wilson's screws what we have, we think, said to you before, that they are with us an incidental product, and of course the supply limited and somewhat variable, and in taking orders for them, it is understood that we fill as far as we may be able to do so at the time.

Yours, truly,
NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JONA. L. SLOCUM.

The counsel for the plaintiffs then produced and read in evidence a letter from the plaintiffs to the defendants, bearing date the 17 Nov'r, 1852, marked E, in the words and figures following, to wit:

NEW YORK, *Nov'r* 17, 1852.

Mr. H. L. KENDALL.

DEAR SIR: We are in great want of the following gimlet-point screws to fill quite a number of small orders, and hope you will send what you can of them by steamboat, and without delay. We think you cannot fully understand our wishes, as you have not sent us a gro. of screws since Sept. 10; we have always said send what you can of our orders as fast as you get a case or two ready, or to that effect.

G. P. screws, N. E. or Wilson's, to fill special orders.

$\frac{3}{8}$. 10, 20, 10, 40, $\frac{1}{2}$, 10, 40, 20, 30, 20, 20, 10.
2 3 4 5 2 3 4 5 6 7 8.

$\frac{5}{8}$. 10, 40, 40, 30, 80, 80, 30, $\frac{3}{4}$, 5, 10, 30, 70, 60, 50, 30, 20,
3 4 5 6 7 8 9 4 5 6 7 8 9 10 11
5, 5.
12 13.

1. 20, 30, 90, 50, 30, 30, 50, 30, 5, 5, 1¼, 5, 20, 80, 100, 40,
   6 7 8 9 10 11 12 13 16 17 7 8 9 10 11
   10, 5.
   14 15.

1½. 10, 5, 20, 10, 30, 10, 10, 5, 5, 5, 5, 1¾, 5, 10, 25, 20, 20,
   8 9 11 13 14 15 16 17 18 19 20 10 11 12 13 14
   5, 5.
   15 16.

2. 10, 5, 5, 10, 5, 10, 10, 5, 3, 2½, 5, 3, 4, 3, 5, 3.
   11 12 14 15 10 16 18 19 20 12 13 15 16 18 19.

3. 1, 4, 2, 60, 3½, 2, 2, 2, 4, 2.
   18 19 20 22 18 19 20 22.

You will of course send all you can in addition, as we have not a gross of any of these sizes for our daily sales; we should prefer that you consider this an additional order, as it would keep our stock in better order. You will please advise us how you take it, that we may keep our accounts correct.

Yours, truly,
BLIVEN & MEAD.

The counsel for the plaintiffs then produced and read in evidence a letter from the defendants to the plaintiffs, marked No. 4, and bearing date the 19th November, 1852, as follows, viz:

PROVIDENCE, *Nov.* 19, 1852.

BLIVEN & MEAD, *New York.*

GENT: Your esteemed favor of the 17th inst. is at hand. The best we can do for you is to enter the order, to be taken up in course, say in about two months, and the screws to be charged at whatever price they may be selling for by us at date of invoice. The reason we have not sent any portion of your orders at once is, we have no stock of screws on hand; and to put up any portion of an order immediately after receiving it would delay those already in hand waiting their turn. Some months since we had some sizes that we could spare promptly when called for; but we are from "hand to mouth" all round now. If you do not advise us to the contrary we shall enter your order, to be taken up in course. Your orders now in hand will not be delayed unnecessarily.

Yours, truly,
NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JONA. L. SLOCUM.

The counsel for the plaintiffs then read in evidence a letter from the plaintiffs to the defendant, marked F, and bearing date

the 10th day of February, in the year 1853, in the words following, namely:

NEW YORK, *February 10th*, 1853.

Mr. KENDALL.

DEAR SIR: There is yet due us a lot of piano screws, ordered a long time since. The party annoys us to death for them. Please send them along; also remember we have not a gross of screws on hand, N. E. stamp, and only half a dozen sizes Wilson's. Please enter now on your books, to be filled soon after completing our present orders, 10,000 gro. Wilson's screws, and 10,000 gro. New England screws, same assortment as last; two large orders, say to be filled in its turn, at such largest discount as you may be selling at the time of delivery.

Truly yours,
BLIVEN & MEAD.

To the NEW ENGLAND SCREW CO.

The counsel for the plaintiffs then read in evidence a letter bearing date the 17th day of February, 1853, marked No. 5, in the words following, namely:

PROVIDENCE, *Feb'y* 17, 1853.

BLIVEN & MEAD, *New York.*

GENT: Your favor of the 10th inst. is at hand, and your order will be entered to be taken up in course, and filled as far as we may be able at that time, and at whatever price we may be able at that time, and at whatever price we may be selling screws for at date of invoice. We are able to do very little at present with piano screws, so great is the pressure upon us for the common varieties. We sent you soon after the order was given what piano screws we could, and we think your customer had better not depend upon us for the balance.

Yours truly,
NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JONA. L. SLOCUM.

The counsel for the plaintiffs then read in evidence a letter from the plaintiffs to the defendants, marked "G," and dated the 16th April, 1853, as follows, namely:

NEW YORK, *April* 16, 1853.

Mr. KENDALL:

DEAR SIR: Please send us 20,000 gro. of New England and Wilson's G. P. screws as soon as possible, after having completed our old orders and the more recent of Feb'y 10th, the same to be

4764

charged at the very lowest prices you are selling it at the time of delivery, and memorandum of sizes to be given by us when you require it.

Please advise us how many thousand gro. of screws are now on the way for us. We have but 3 sizes on hand, and have a hundred orders to fill.

Yours, truly,

BLIVEN & MEAD.

To the NEW ENGLAND SCREW CO.

The counsel for the plaintiffs then read in evidence a letter marked No. 6, dated 19th April, 1853, from the defendants to the plaintiffs, as following, viz:

PROVIDENCE, *April* 19, 1853.

BLIVEN & MEAD, *New York.*

GENT: Your esteemed favor of the 16th inst. is received. We shall enter your order for 20,000 gro., to be taken up in its turn and filled as well as we may be able at the time, consistently with our obligations to our other customers, and at our current rates of discount at date of invoice. Our new mill will *will* be in operation the coming autumn, which will enable us to supply our friends promptly and fully.

Yours, truly,

NEW ENGLAND SCREW CO.,
By JONA. L. SLOCUM.

The counsel for the defendants then produced upon notice, and delivered to the counsel for the plaintiffs, a letter from the plaintiffs to the defendants, bearing date the 30th September, 1853, marked H, which letter was read in evidence on the part of the plaintiffs as follows, viz:

NEW YORK, *Sept.* 30*th*, 1853.

Mr. H. L. KENDALL,
Ag't New England Screw Co.

DEAR SIR: Not having yet received any screws from you since June 23d, when we called your attention to our orders, we now take up your invoices of screws, and apply them on our orders, as you say they were intended by you to be applied, and find the following G. P. screws still due us, on our order of Sept. 30, 1852, accepted by your letter of Oct. 7, 1852.

⅜.	300,	490,	500,	360,	200,	½,	260,	450,	300,	220,	80,	50,	20.
	2	3	4	5	6		2	3	4	5	6	7	8
⅝.	100,	210,	450,	390,	240,	10,	¾,	40,	290,	400,	30,	170,	80,	30.
	4	5	6	7	8	9		5	6	8	10	11	12	13.

1. 70, 130, 250, 20, 30, 80, 1¼, 20, 90, 40, 10, ⅞, 50, 20.
   6 7 8 9 13 14 8 15 16 18 7 12.

1½. 50, 65, 40, 40, 1¾, 30, 40, 60, 45, 15, 2, 40, 20, 25.
   11 15 16 17 14 15 16 17 18 15 16 18.

2. 30, 10, 2½, 25, 32, 22, 10, 6, 3, 15, 20, 10, 73.
   19 20 16 18 19 20 22 18 19 21 22.

3½. 2.
   22.

These we hereby require you to deliver to us, either of Wilson's or New England screws, discount of 55 per cent. for Wilson's, and 50 per cent. for New England screws, which was the discount at the time the order was accepted. The gro. amount of the order at list prices was $4,182 95; gross amount received of the sizes ordered, was $1,517 65; and of surplus sent of ⅜, ⅞, ⅛, and ⅞, ⅛, is $54 30; leaving a gross amount of $2,611 26 due to us. This we claim in screws of any salable sizes, or the difference between the present New York selling prices and the factory prices of Sept. 30th, 1852.

There is also due us, on our order of October 15, 1852, which was accepted by your letter of Oct. 16—

⅜. 80, 180, 150, 40, 10, 1½, 40, 260, 120, 40, 10, 10, ⅝, 30, 270,
   2 3 4 5 6 2 3 4 5 6 7 5 6
   150, 180, 30.
   7 8 9.

¾. 10, 70, 20, 150, 20, 200, 140, 140, 1, 160, 230, 50, 200, 100,
   5 6 7 8 9 10 11 12 6 7 8 10 11
   20, 50.
   14 15.

1¼. 60, 130, 10, 95, 75, 25, 50, 1½, 30, 50, 70, 50, 70, 50, 5.
   8 12 13 14 15 16 17 11 12 14 15 16 17 18.

2. 10, 45, 45, 60, 50, 45, 30, 10, 2½, 10, 5, 20, 10, 15, 20.
   12 13 14 15 16 17 18 19 14 15 16 17 18 19.

3. 16, 12, 7, 30, 17, 20, 6, 20, 10, 3½, 4, 10, 7, 4, 5, 5, gro.
   16 17 18 19 20 21 22 23 24 20 22 24 22 24.

These we hereby require you to deliver to us, either of Wilson's screws at 55 per cent., or New England at 50 per cent. discount from the list prices, to be delivered of the sizes as above, or in equal amount in any regular and salable sizes you make. The gross amount of the order at list prices is $5,723 ⅘⅟₁₀₀; the gross amount received on the same is $3,472 63; leaving a balance still due us, gross amount, $2,251 17; this we claim in screws as aforesaid, or the difference between the present New York price and the contract price.

There is also due us on our order of Nov. 4, 1852, which was accepted by your letter to us, of Nov. 6, 1852—

Wilson's Screws.

$\frac{1}{2}$. 80, 160, $\frac{5}{8}$, 80, 180, 200, 100, 50, $\frac{3}{4}$, 50, 200, 200, 140, 60, 20.
2 3 4 5 6 7 8 5 6 8 10 11 12.

1. 90, 180, 100, 100, 150, 50, 20, 50, $1\frac{1}{4}$, 50, 200, 100, 120, 100,
6 7 8 9 11 13 14 15 8 10 11 12 13
95, 45, 50.
15 16 17.

$1\frac{1}{2}$. 70, 100, 140, 150, 140, 95, 50, 45, $1\frac{3}{4}$, 30, 30, 40, 25, 30, 30,
10 11 12 13 15 16 17 18 14 15 16 17 18 19
30.
20.

2. 20, 40, 50, 90, 100, 45, 40, gro.
12 13 14 15 16 17 18.

Which we hereby demand you to deliver as per contract. The gross amount of the order is \$4,427 $\frac{50}{100}$; the gross amount received per your invoice of Jan'y 7th is \$2,130 50; leaving a balance due us, gross amount \$22 97. There is also due us on our order of Nov. 17, 1852, and accepted by your letter of Nov. 19th, 1852—

$\frac{3}{8}$. 10, 15, 10, 30, $\frac{1}{2}$, 5, 10, 10, $\frac{5}{8}$, 40, 20, 10, 20, 60, $\frac{3}{4}$, 5, 20, 10.
2 3 4 5 2 3 6 4 5 6 7 8 5 10 12.

1. 10, 10, 10, 5, $1\frac{1}{2}$, 10, 5, 5, 5, $1\frac{3}{4}$, 5, 2, 10, 10, 5, 5.
6 7 8 17 8 16 17 19 12 11 16 18 19.

$2\frac{1}{2}$. 5, 3, 2, 2, 3, 3, 60, $3\frac{1}{2}$, 2.
12 13 16 18 19 22 19.

Which we hereby require to be delivered as per agreement, or we shall hold you for the difference between the present factory price and the selling price in New York. The gross amount of the order is 903 46 dolls.; the amount received, including screws sent over the quantities of same sizes ordered, is \$603 $\frac{89}{100}$ dolls., leaving a balance at gross prices of 299 $\frac{57}{100}$ dolls.

You have our order dated February 10th, 1853, for 10,000 gro. New England screws, and 10,000 gro. Wilson's screws, which was accepted by your letter of Feb'y 17. These we hereby demand to be sent to us on terms and conditions of said letter of acceptance, and in sizes proportioned as you usually make them, or as per the following memorandum:

$\frac{3}{8}$. 50, 100, 50, 30, 20, $\frac{1}{2}$, 30, 100, 100, 50, 40, 20, $\frac{5}{8}$, 50, 200,
2 3 4 5 6 2 3 4 5 6 7 4 5
300, 300, 220.
6 7 8.

⅝. 100, 50, ¾, 20, 400, 600, 1100, 800, 600, 400, 200, 100,
9 10 5 6 7 8 9 10 11 12 13

400, 600, 800, 1000, 1200.
6 7 8 9 10.

1. 800, 400, 200, 100, 100, 1¼, 200, 400, 600, 600, 600, 400,
11 12 13 14 15 8 9 10 11 12 13

400, 200, 100, 10.
14 15 16 17.

1½. 200, 400, 600, 600, 400, 200, 200, 100, 40, 2, 40, 40, 100,
10 11 12 13 14 15 16 17 18 10 11 12

200, 200, 200, 200.
13 14 15 16.

2. 100, 100, 20, 20, 2½, 40, 40, 60, 60, 60, 40, 20, 3½, 20, 20,
17 18 19 20 14 15 16 17 18 19 20 18 20

20, 20.
22 24.

3. 40, 40, 40, 60, 60, 40, 100, 40, 60, 4, 10, 10.
16 17 18 19 20 21 22 23 24 22 24.

20,000 gross.

You have also our order dated April 16, 1853, for 20,000 gross New England and Wilson's screws, which was accepted by your letter to us of the 19th of April; these we hereby demand to be sent to us on terms and conditions of said letter of acceptance, and in proportion of sizes as you usually make them, or as per memorandum above, per our order of Feb'y 10th.

These orders of Feb'y 10th and April 16, if not filled immediately, or in their turn, as agreed, will render you liable to us for damage to us in consequence of our not having these desirable goods for our usual trade, also for the difference between the factory price and the usual New York market price; and we hereby notify you that we hold you for such damage. We notify you that on the completion of any and all of the orders herein named we are ready on our part to fulfil our obligations for the same; and although, in your letter of Nov. 6, you waived immediate or cash payment, are willing, if you require it, to give security to pay the bills at maturity. In applying the invoices received to the orders, as you claim they should be, and as we have herein, we pass to your credit, without any reduction, the full amount of your invoice of January 7th last.

Respectfully, yours,

BLIVEN & MEAD.

The counsel for the defendants then produced upon notice, and delivered to the counsel for the plaintiffs, a letter from the plaintiffs

4766

to the defendants, bearing date the 30th Sept., 1853, which was read in evidence on the part of the plaintiffs as follows:

NEW YORK, *Sept.* 30, 1853.

Mr. H. L. KENDALL,
Agt. New England Screw Co.

SIR: We enclose herewith our note drawn at six months, dated Sept. 30th, 1853, for 1,305 $\frac{63}{100}$ dolls., which we tender in payment for the balance due on our order of September 30th, 1853.

The gross amount of said orders at the list prices is $4,182 91, from which deduct the amount of your invoice of Nov. 19, 1852, gross amount $1,571 65, will leave a balance due us, gross amount, $2,611 26, which, at the discount for New England screws, will leave a balance due us of 1,305 63 dollars.

We enclose our note at 6 months, dated June 14, 1853, for 2,718 $\frac{81}{100}$, which we tender in payment for the balance due us on our order for screws dated October 15, 1853, and for the amount received on the same, as follows:

The net amount for New England screws, at 50 per cent. discount		$1,430 95
The net am't of Wilson's screws, at 55 per cent. disc't		1,287 86
We received your invoice of Wilson's screws, March 17, 1853	$351 05	
We received your invoice of Wilson's screws, April 23, 1853	450 79	
		801 84
Leaves a balance due us this day in Wilson's screws		486 02
We rec'd your invoice of March 17, 1853, for N. E. screws		489 56
We rec'd your invoice of April 23, 1853, for N. E. screws		357 72
		847 28
		583 67
Add to this 10 gro. over in invoice		1 90
		585 57

We enclose our note at 6 months, date Sept. 30, 1853, for 1,033 $\frac{66}{100}$ dolls., in payment for the balance due on our order for Wilson's screws, dated Nov. 4, 1852,

the net am't of which, at 55 per cent., is	$1,992 38
Rec'd by your invoice of Jan'y 17, 1853	958 72
Balance due us on Wilson's screws, net am't	1,033 66
We enclose our note at 6 months, dated April 30th, 1853, for $520 63, in payment for the amount of our order of Nov. 17th, 1853, which, at the list prices, amounts to, gross amount	903 46
Deduct the gross amount of your invoice, Feb'y 9th, 1853	603 89
Will leave a balance due, gross amount	299 57
Which at 40 per cent. discount, is	179 74
Add the net am't received Feb. 9, 1853	340 89
Average due, 6 months from April 30th	520 63

We enclose our note at 6 months, dated April 30th, 1853, for $6,002\frac{49}{100}$ dolls., in payment for screws due as per our order of Feb. 10, 1852, as follows: Gross amount of our order at regular list is $10,439\frac{10}{100}$, half of which is for New England screws, at 40 per cent. discount is $3,131 73; and the balance for Wilson's screws is $2,870 76—$6,002 49 net amount due.

We enclose our note at 6 months, dated Sept. 30, 1853, for 6,263 46 dolls., in payment for screws due on our order of April 19, 1853; the gross amount of the order, as per memorandum now given, is 10,439 10 dolls., which at 40 per cent. disc't, is 6,263 46 dolls.

These several notes we hereby tender in payment, and demand the screws as per our several orders.

Respectfully, yours,

BLIVEN & MEAD.

Archibald Y. Paddock was then sworn as a witness on the part of the plaintiffs, who testified, in substance, as follows:

I reside in Brooklyn, and am employed in a dry goods jobbing house in the city of New York; I was in the employment of the plaintiffs on and previous to the 30th Sept., 1853. I left New York on the last mentioned day and went to Providence by request of the plaintiffs; I took with me the two letters, bearing date the 30th Sept., 1853, just read to the jury, and also the several promissory notes referred to in the letters last read. I delivered the two letters to Mr. Kendall, and also tendered to him the notes, and in the name and on the behalf of the plaintiffs demanded the screws that had not been delivered to the plaintiffs, in fulfilment of their orders. The defendants did not deliver the

screws so demanded or any of them. Mr. Kendall went on to explain why they could not deliver them; but the result of the conversation was, he declined to deliver them to the defendants.

The counsel for the defendants, to further maintain the said issue on its part, then produced and read in evidence a letter written by the plaintiffs to the defendants bearing date New York, the 19th of May, 1853, as follows:

NEW YORK, *May 19th*, 1853.

New England Screw Co. in acc. with Bliven & Mead.

By amount per your statement.....		$1,990 01
Less overcharge, Feb'y 9—		
New England charged 40 p. c.; should be.....	50 p. c.	
Wilson " 45 "	55 p. c.	
		60 39
Average, March 27th, 1853.....		$1,929 62

Mr. H. L. KENDALL:

DEAR SIR: Yours with statement of account is received. We have deducted for overcharge, bill of Feb'y 9th, as per above statement, leaving balance $1,929 62, for which amount please draw 6 months from average date.

By reference to our letter and order of Sept. 30, Oct. 15, and Nov. 4 and 17, you will see that we cannot understand your letter of yesterday, unless you are more than 6 months behind your orders. Do send the whole or any part of the piano screws.

Yours, respectfully,

BLIVEN & MEAD.

Jonathan L. Slocum, being then sworn as a witness on behalf of the defendants, testified, in substance, as follows:

I am in the employ of the defendants, and until quite recently I had charge of their books, accounts, and correspondence. I am now their secretary. The plaintiffs were customers of ours. They reside in New York, and dealt in all kinds of hardware. Whether they dealt on commission or otherwise I do not know. In 1852 they purchased screws from us.

Being shown the letter of the 19th of May, (before read,) the witness that near the close of the year 1852 we reduced the discount on first quality screws from 45 to 40 per cent., and on the Wilson's screws from 55 to 45 per cent. The difference between the plaintiffs and the company, and which they refer to in the item "less overcharge $60 39," arose thus: We received from the plaintiffs in October, 1852, an order for screws, which we accepted, without any reservation as to any change we might make in our rates of discount. Subsequently, and on the 17th November, 1852,

we received another order from them. The screws charged in the bill rendered to the plaintiffs, referred to in their letter of 19th May, were charged at our regular rates at the time. The discount at the time the October order was received was 50 per cent. on the New England screws. This order was to be delivered in two parcels. Between the times of receiving the plaintiffs' orders and their being taken up the rates of discount had changed, but we executed them at the rates of discount of the time when the orders were received, with the exception of the order dated 17th November, which was made subject to any future changes.

The items of March and April charged in the bill rendered were sent by us under the October order, and that of February under the order of the 17th of November, 1853.

Being cross-examined, witness testified that he has been in the employment of the defendants since 1st January, 1849. They are manufacturers of wood-screws; they are gimlet or sharp-pointed screws; they have been manufacturing them since 1840, and have been largely engaged since September, 1852. Between the 30th September, 1852, and 30th September, 1853, there was no other manufactory in this country of gimlet or sharp-pointed screws. The difference between the screws denominated New England and Wilson is in quality merely; the latter are inferior to the former. I am acquainted with Henry L. Kendall; he is now, and has been for a number of years, *been* the general agent of the defendants. He is also a stockholder and director of the company; as their agent, he makes contracts and transacts the general business of the company. He has the supervision of their books, papers and letters. He has been such agent and exercising these powers since the year 1849, and prior thereto I was in the habit of writing business letters for the defendants, under the direction and in the name of Henry L. Kendall, the agent of the company.

The examination of the witness Jonathan L. Slocum was then continued, as follows:

I have no knowledge that any notice of the change in the rate of discount on the first quality of screws was given to the plaintiffs. As far as I know, all the communications between the plaintiffs and the defendants were by writing. There were no letters and no correspondence between them from the 30th September, 1852, to the 17th February, 1853, other than the letters which have been produced upon this trial. I have no recollection of any personal interview between the parties between the two last mentioned dates; the books of the defendants contain the original entries of the four items specified in the statement referred to in the plaintiffs' letter dated 19th May, 1853. The bill rendered to the plaintiffs for $1,990 01 was made out by the defendants, and was sent to the plaintiffs, but whether in a blank envelope, or in a letter accompanying it, I cannot say; the bill rendered was retained by

the plaintiffs, and it is the account referred to by them in their letter of the 19th May. The bill rendered was not dated, but it was made out and sent to the plaintiffs about the middle of May, 1853. I suppose the plaintiffs' order of the 30th September, 1852, has never been filled to this day; the quantity of screws specified in that order have never been delivered by the defendants. It would have been different from any other case if it had been. I have not now the means of stating what part of that order remains unexecuted.

The order of the 15th October, 1852, has never been executed by the defendants to this day. I am unable to state from recollection what part or proportion of that order has been delivered by the defendants; the books of the company show what part of that order has been executed.

The order of the 4th November, 1852, has never been executed by the defendants; they have delivered a part only of the quantity ordered. I am unable to state what part or proportion of that order has been fulfilled; the books of the company show in this instance, as in every other case, what screws have been delivered under such order.

The order of the 17th November, 1852, has never been executed by the defendants.

They have delivered a part only of the screws; I am not able to say what part or portion of the screws have been delivered.

The defendants have not executed the two last orders, dated respectively the 17th February and the 16th April, 1853; they have not delivered any part or portion of the screws specified in either of these orders.

The counsel for the defendants then produced and read in evidence a letter from the plaintiffs to the defendants, dated the 3d September, 1852, as follows, viz:

NEW YORK, *Sept.* 3, 1852.

Mr. :

DEAR SIR: Why the deuce don't you send us screws ordered long since? Not a week passes but we hear of your taking and executing orders from some one of our customers. This you have given us long since to understand was your rule of business; but what we now complain of is the precedence given to such orders, particularly the first order from such parties.

Respectfully, yours,

BLIVEN & MEAD.

To the NEW ENGLAND SCREW CO.

The counsel for the defendants then produced and read in evidence a letter from the defendants to the plaintiffs, dated 4th September, 1852, as follows, viz:

PROVIDENCE, *Sept.* 4, 1852.

BLIVEN & MEAD, *New York:*

GENTS: Yours of the 3d inst. is at hand. Your order of Aug. 18th came duly to hand and was entered to be taken up in course. If, however, you wish us to send what we can now, without waiting its turn, we will do so. We are not aware that we have given any cause for the complaint you make, viz: that we fill orders of new customers before we do those of old friends. Perhaps we may in some case, though the writer does not recollect any. Have put up for some party a few sizes of such as we had plenty and do have plenty of, all the time. This we should do for any customer who might wish it; but orders embracing a range of sizes we invariably take up in turn, and fill as far as possible. We shall in every case serve you to the best of our ability, giving no orders precedence over yours.

Yours, truly,

NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JONA. L. SLOCUM.

Jonathan L. Slocum being further examined by the counsel for the defendants, testified, in substance, as follows:

I have calculated interest upon the sum of $1,990 $\frac{01}{100}$. It amounts to $225 20, which added to the principal, makes $2,215 $\frac{21}{100}$.

The witness further testified: The orders were taken up in their turn, and were filled in proportion to the other orders as we made the screws and could deliver them. We had from five hundred to six hundred customers.

This evidence was in due season objected to by the plaintiff's counsel as being irrelevant and immaterial, but the court overruled the objection, and did decide that it was admissible; to which ruling and decision the counsel for the plaintiffs did then and there except.

The production of small screws was small in proportion to the medium size. Some of the plaintiffs' orders ran very heavily on the small sizes, calling for an undue proportion of them. I refer particularly to the order of the 15th Oct. The item in the bill rendered of $340 $\frac{89}{100}$ charged under date of 3d February, 1853, was for screws delivered under the order of 17th Nov'r, 1853. The plaintiffs had been customers of the defendants for several years.

We had taken up their orders and had delivered to them part only of the whole quantity so far as we were able. We had never executed any of their general orders in full. It would not have been possible for us to have delivered to them all their orders in full and also to have served our other customers. The usage of

the defendants with their customers when orders were given to and accepted by them without any mention of prices, was to charge at the rates ruling at the time of the delivery, and if in the interval between the receipt of the orders and the delivery the discount had increased, the buyers had the benefit of the allowance; and if prices had increased and the discount off was less, the buyer paid according to the increased price.

The testimony, from the words "the usage of the plaintiffs," was in due season objected to by the counsel for the plaintiffs as inadmissible, on the ground that it was irrelevant and immaterial; but the court overruled the objection and admitted the evidence, to which ruling and decision the counsel for the plaintiffs did then and there except.

Being further cross-examined, he testified that those customers who had not been notified of the reservation on the part of the defendants to increase their price, if at the time of delivery the rates had gone up, would have had their orders supplied at the old rates. It was not the practice of defendants to deliver by instalments upon the orders.

When we thought the market would rise we usually notified our customers when their orders were accepted that we should charge them at the rates ruling at the time of delivery. We had orders for six months and a year in advance of our production. Without such notice they would have expected to be charged at the old prices. By old prices I mean the price existing at the time of the order. When we sent to the plaintiffs the screws charged under date of 9th February we did not accompany them with any communication. We gave no notice to the plaintiffs that any of the screws delivered were applicable to the order of the 17th November. I cannot give the sizes or the description of the screws charged in the item of $340 $\frac{89}{100}$.

They may or may not have answered to the sizes and description contained in the prior orders. After having accepted the different orders of the plaintiffs we continued taking orders from our other customers as they were given, but we declined to take orders from new parties. The prices of screws under the order of 17th November were higher than the prices we could have charged, if we had delivered them under the plaintiffs' prior orders. The prices under the order of the 17th Nov. were ten per cent. higher than those under the prior orders; the company did not fill orders for others in precedence to orders of plaintiffs.

The counsel for the defendants here rested his case.

John G. Bogart was then sworn as a witness on the part of the plaintiffs, and he testified that he is one of the firm of Read, Sprague & Co., of No. 97 Pearl st., hardware merchants. Between the 30th Sept., 1852, and the 30th Sept., 1853, my firm had deal-

ings with the defendants; between those dates we ordered screws of them, which they delivered. It is impossible for me now to recollect the amount of the orders or the amount of screws delivered to us; I cannot approximate to the amount. It was not less than $1,000, and may have amounted to over $5,000. Our orders were filled, upon an average, in from 2 to 3 months.

Peter Duryea, being called by the plaintiffs and sworn as a witness, testified, in substance:

I am a hardware merchant. Between the 30th September, 1852, and the 30th Sept., 1853, the defendants delivered to me a limited quantity only of screws ordered; I ordered the screws on the 19th Feb'y, 1853, and part of them were delivered on the 9th July, 1853; I gave them another order on the 15th July, 1853, and they delivered a part of the screws on the 18th February, 1854. These were all Wilson's screws.

Samuel W. Sears, being called as a witness by the plaintiffs and sworn, testified as follows:

I am of the firm of Sears, Adriance & Platt, merchants in hardware. Between the 30th Sept., 1852, and the 30th Sept., 1853, the defendants took from us different orders for screws; they delivered in from three to six months after the orders were given; we received during that time screws to the amount of about $10,000 gro.

Being cross-examined: They delivered part only of the various quantities ordered.

Cornelius Oakley, jr., being called by the plaintiffs and sworn as a witness, testified, in substance, as follows:

I am of the firm of Oakley, Fox & Co. The defendants took from us two orders for screws, between the 30th September, 1852, and the 30th Sept., 1853; on the 3d Nov., 1852, we gave them an order for 3,400 gross, payable at the prices ruling at the time of delivery, and received on that order only 1,900 gross, in the spring of 1853. In October, 1853, we gave another order, but smaller, on which 50 per cent. only of the quantity ordered was received, and this in August, 1854.

John G. Tucker, being called by the plaintiffs and sworn as a witness, , that between the 30th September, 1852, and the 30th September, 1853, he gave the defendants orders for screws, which they accepted.

Being cross-examined, says, that the screws were delivered in about six months from the date of the orders; only portions of the screws ordered were delivered.

The depositions of witnesses, taken under a commission issued by the plaintiffs, were then read as follows, viz:

I, William Whitaker, of the city of Providence, in the State of Rhode Island, hardware merchant, aged 40 years and upwards, being duly and publicly sworn to state the truth, the whole truth,

and nothing but the truth, in answer to the interrogatories which shall be proposed to me, and examined on the part of Bliven & Mead, doth depose and say as follows:

First question by Geo. W. Wright, esq., for Bliven & Mead. Of what firm was you a member from the 30th Sept., 1852, to the 30th September, 1853?

Ans. Barker, Whitaker & Co., of Providence.

2d ques. What was the nature of their business, and where did they carry it on?

Ans. Selling hardware in this city.

3d ques. During that time did they make frequent purchases of screws from the New England Screw Co.?

Ans. We did.

4th ques. Were your orders to them verbal or written?

Ans. Generally written. I could not say they were always written, but orders for any quantity were always written.

5th ques. How long after the giving of the orders were they generally filled?

Ans. Generally from one to three or four days; that might be qualified, I suppose—perhaps sometimes longer.

6th ques. Can you state the amount, or near the amount, of your purchases from the 30th of Sept., 1852, to the 30th Sept., 1853, of the New England Screw Co.?

Ans. I cannot, with certainty, without recourse to our books, not having examined into the matter—I should say from two to four thousand dollars.

7th ques. Can you state what sizes of screws were so purchased by you?

Ans. We purchased a general assortment of sizes usually wanted in trade, as far as we could obtain them.

8th ques. Have you the invoices of the goods so purchased by you, or what was your manner of purchasing?

Ans. We sent our orders with the pass-book, and the portion of the screws, or whatever screws, they sent on that order were put on the pass-book, and sent us with the pass-book. Our settlements were made once a quarter, by a general bill taken from the footings of said pass-book; we took no other invoices.

Mr. H. L. Kendall, on behalf of the N. E. Screw Co., declined to cross-examine the witness, and it was agreed by the counsel for Bliven & Mead and Mr. Kendall, that if the counsel for the N. E. Screw Company wished, after this deposition was closed, to ask the witness anything, he should be at liberty to do so, in the absence of the counsel for Bliven & Mead, on written interrogatories, which shall be first submitted to the counsel of B. & Mead.

WM. WHITAKER.

Examination taken, reduced to writing, and by the witness sub-

scribed and sworn to this 24th day of March, A. D. 1855, before me.

JOSEPH S. PITMAN,
Commissioner.

Cross examination, March 26, 1855.

1st ques. by T. A. Jencks, esq., for the New England Screw Co. Did you always get all the sizes that you sent for, and as many of all the sizes that you sent for?

A. We did not.

2d ques. Was there any reason given by the agent of the New England Screw Co. for not furnishing all that you wanted, or all the sizes that you wanted? and if so, please state the reason.

Ans. It was understood by us that the demand for small sizes was larger than the supply; and, therefore, in order to obtain our supply, we had recourse to the plan of ordering in small quantities and often, and then we seldom got as many as we wanted at the time. It is my impression, that sometimes in urgent cases we obtained all we wanted for a particular order, by going several different times for them, we always representing that we being here on the spot, were entitled to them in preference to the trade from abroad.

3d ques. How long have been in the custom of sending to the factory for screws in the manner you have stated?

Ans. I cannot say definitely—for some time prior to September, 1852.

4th ques. How long have you purchased your screws direct from the factory?

Ans. Ever since Mr. Hodges was agent, and for some time previous, nearly ever since they made screws; we always bought them direct from the factory.

WM. WHITAKER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 26th day of March, A. D. 1855, before me.

JOSEPH S. PITMAN,
Commissioner.

I, Nathaniel A. Eddy, of the city of Providence, in the State of Rhode Island, hardware merchant, aged 39 years and upwards, being duly and publicly sworn to state the truth, the whole truth, and nothing but the truth, in answer to the interrogatories which shall be proposed to me, and examined on the part of Bliven & Mead, doth depose and say as follows:

First ques. by Geo. W. Wright, esq., for Bliven & Mead. What was your business from the 30th September, 1852, to the 30th of September, 1853, and where did you carry it on?

Ans. General hardware business, in Broad st., Providence.

2 ques. During that time did you make frequent purchases of screws from the New England Screw Company?

Ans. I did.

3d ques. Were your orders to them verbal or written?

Ans. It was seldom I sent a written order; it was generally a memorandum of sizes written out; I either went myself or sent some one in my employ.

3d ques. How long after the giving the orders were they generally filled?

Ans. Well, some portion of them were filled.

Ans. Well, some portion of them were filled in a day or two, and some portion of them were from six to nine months.

4th ques. Can you state the amount or near the amount of your purchases from the New England Screw Co. from the 30th September, 1852, to the 30th September, 1853?

Ans. I should think from two to three thousand dollars.

5th ques. Can you state what sizes of screws were so purchased by you?

Ans. All sizes; a variety of sizes.

6th ques. Have you the invoices of the goods, or what was your manner of purchasing?

Ans. I have some bills of screws, and have also a pass-book, on which one kind of screws was always entered; that kind was that marked "New England Screw Co.," common thread wood-screws.

Cross-examination.

1st question by T. A. Jencks, esq., for the New England Screw Co. Did you always get all of the sizes that you sent for, and as many of the sizes that you sent for?

Ans. No, never, during that year.

NATHANIEL A. EDDY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this twenty-fourth day of March, A. D. 1855, before me.

JOSEPH S. PITMAN,
Commissioner.

I, John C. Mather, of the city of Providence, in the State of Rhode Island, clerk and book-keeper for Joseph Belcher, aged 24 years and upwards, being duly and publicly sworn to state the truth, the whole truth, and nothing but the truth, in answer to the interrogatories which shall be proposed to me, and examined on the part of Bliven & Mead, doth depose and say as follows:

First quest. by Geo. W. Wright, esq., for Bliven & Mead. In whose employment was you from the 30th September, 1852, to the 30th September, 1853, and in what capacity?

Ans. In the employment of Joseph Belcher, as clerk and book-keeper.

2d ques. What was Mr. Belcher's business; where did he carry it on?

Ans. General hardware business, at 121 and 123 Broad st., Providence, R. Island.

3d ques. During that time did he make frequent purchases of screws from the New England Screw Co.?

Ans. He did.

4th ques. Were his orders to the New England Screw Co. verbal, or written?

Ans. Both verbal and written. I might add that we seldom at that time made orders, but memorandums merely, without addressing any particular party—for screws, of course, is implied.

5th ques. How long after giving the orders were they generally filled?

Ans. Well, sizes that they had on hand and could spare; we used to take with us; for the orders, we used to call for them in a few days, at our convenience, when they could spare them.

6th ques. Can you state about the amount of Mr. Belcher's purchases of screws of the New England Screw Co. from the 30th September, 1852, to the 30th Sept., 1853?

Ans. I should think between one and two thousand dollars; I should think, without examining the books.

7th ques. Can you state what sizes of screws were so purchased by Mr. Belcher?

Ans. We were in the habit of buying nearly all of the sizes, or all of the medium sizes; I don't suppose we ever bought any six-inch screws, but the medium sizes are intended; some of our customers required certain sizes, and we used to buy those sizes specially for them; there were blind-makers whom we used to buy a good many for; generally we bought an assortment of screws to fill up our shelves—screws for common building purposes.

8th ques. In buying to fill up your shelves, what sizes did you purchase?

Ans. Usually from 2-inch down to an half inch.

9th ques. Had you invoices of the goods so purchased, or what was your manner of purchasing?

Ans. The first quality were usually entered upon a pass-book; the second quality upon bill-heads.

Cross-examination.

First ques. by T. A. Jencks, esq., for the New England Screw Company. Did you always get all the sizes that you sent for, and as many of all the sizes that you sent for?

Ans. Not always, but usually, on account of our orders being small.

2d question. How many gross did you usually send for at a time?

Ans. About that time we used to send for from, say, from 20 to 40 gross; and at other times for from one to two hundred gross, and frequently for single grosses of large size.

J. C. MATHER.

Examination reduced to writing, and by the witness subscribed and sworn to this 26th day of March, A. D. 1855, before me.

J. S. PITMAN,
Commissioner.

I, William T. Grinnell, of the city of Providence, in the State of Rhode Island, aged 25 years and upwards, being duly and publicly sworn to state the truth, the whole truth, and nothing but the truth, in answer to the interrogatories which shall be proposed to me, and examined on the part of Bliven & Mead, doth depose and say as follows:

First ques. by George W. Wright, esq., for Bliven & Mead. What was your business from the 30th of Sept., 1852, to the 30th Sept., 1853, and where did you carry it on?

Ans. Hardware; in Providence.

2d ques. During that time did you make frequent purchases of screws from the New England Screw Company?

Ans. Almost daily. The bills were rendered quarterly.

3d ques. Of what firm were you a member during that period?

Ans. P. Grinnell & Sons.

4th ques. Were your orders to the New England Screw Co. verbal or written?

Ans. Verbal orders, with a memorandum of sizes, the memorandum sometimes not. I don't think we ever gave more than 4 or 5 of what could be called written orders; those were for particular sales. For our own use, for general sales, I think we hardly ever did such a thing.

5th ques. How long after giving the orders were they generally filled during that period?

Ans. From an half an hour to never; sometimes they were never filled; they were entirely irregular; sometimes we would get part of our order, and consider the order finished; and if the same things or sizes were wanted, the order would be *received*. I am confining my answer to the common wood-screws, made in the general course of their business. They also made for us a particular kind of screw, a fine-thread machine-screw, at very different discounts, and upon special order.

6th ques. Please state as near as you are able the amount of your purchases of the common wood-screw from the New England Screw Company from the 30th of September, 1852, to the 30th Sept., 1853.

Ans. I can't from these papers state. I think about twelve hundred dollars.

7th ques. Can you state what sizes of screws were so purchased by you?

Ans. A general assortment. I can't state definitely without reference to the pass-book.

8th ques. Are the common wood-screws made of wood or iron?

Ans. Of iron or of brass.

9th ques. Is a wood-screw so called because it is to be used to go into wood?

Ans. It is.

Cross-examination.

1st ques. by T. A. Jenckes, esq., for the New England Screw Company. How long has it been your custom to purchase screws directly from the factory?

Ans. Almost from the first establishment of the company. When they were in Canal st. we purchased of them more than ten years.

2d ques. What proportion did the pattern screws or machine-screws you refer to bear to the rest of your purchases during the period referred to?

Ans. I think less than ten per cent.

3d ques. Were you not sometimes during said period unable to get the screws you sent for from the factory?

Ans. Very often unable to get anything.

W. T. GRINNELL.

Examination taken, reduced to writing, and by the witness *and* subscribed and sworn to, this 26th day of March, A. D. 1855, before me.

JOSEPH S. PITMAN,
Commissioner.

I, James Tiffany, of the city of Providence, in the State of Rhode Island, aged twenty-five years and upwards, being duly and publicly sworn to state the truth, the whole truth, and nothing but the truth, in answer to the interrogatories which shall be proposed to me, and examined on the part of Bliven & Mead, doth depose and say as follows:

First ques. by Geo. W. Wright, esq., for Bliven & Mead. Of what firm was you a member from the 30th Sept., 1852, to the 30th Sept., 1853?

Ans. Gardiner & Tiffany.

2d ques. What was the nature of their business, and where did they carry it on?

Ans. Hardware; in Broad st., in this city.

3d ques. During that time did your firm make frequent purchases of screws from the New England Screw Company?

Ans. Yes, we did.

4th ques. Were your orders to them verbal or written?

Ans. Generally verbal, and I don't know but altogether so.

5th ques. How long after the giving the orders were they generally filled?

Ans. They were not generally filled, but they were partly filled, in most cases, and I guess all, in anywhere from one day to a week.

6th ques. Can you state the amount, or near the amount, of your purchases from the New England Screw Comp'y from the 30th September, 1852, to the 30th September, 1853?

Ans. I cannot tell the amount. I could not tell anything near the amount without referring to books. I could tell near the amount by that.

7th ques. Can you state what sizes of screws were so purchased by you?

Ans. I should think they were mostly sizes over inch, as near as I can recollect.

8th ques. Did you purchase generally assortment of sizes?

Ans. Yes; we had a general assortment, though but a few of the small sizes; not so many as we ordered, near.

9th ques. Will you refer to your books, and state as nearly as you can about the amount of your purchases between the 30th September, 1852, and the 30th September, 1853?

Ans. It will not be convenient to do so, as it will require the examination of old books.

JAMES TIFFANY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 28th day of March, A. D. 1855, before me.

JOSEPH S. PITMAN,
Commissioner.

I, Caleb Congdon, of the city of Providence, in the State of Rhode Island, aged 28 years and upwards, being duly and publicly affirmed to state the truth, the whole truth, and nothing but the truth, in answer to the interrogatories which shall be proposed to me and examined on the part of Bliven & Mead, doth depose and say as follows:

First ques., by Geo. W. Wright, esq., for Bliven & Mead. Of what firm was you a member from the 30th Sept., 1852, to the 30th Sept., 1853?

Ans. I was in the employ of J. Congdon & Sons.

2d ques. In what capacity?

Ans. As clerk.

3d ques. What was the nature of their business, and where did they carry it on?

Ans. Hardware business; at 7 Steeple st., city of Providence.

4th ques. During that time did they make frequent purchases of screws from the New England Screw Company?

Ans. I should say that we did.

5th ques. Were your orders to them verbal or written?

Ans. Partly written and partly verbal.

6th ques. How long after the giving of the orders were they generally filled?

Ans. From one to four days; that is, the orders were not filled. Whenever we gave an order it was seldom filled. They sent us what they could furnish, and in from one to four days.

7th ques. Please state as nearly as you are able the amount of your purchases from the 30th of September, 1852, to the 30th September, 1853.

Ans. Between 350 and 400 dollars between those dates.

8th ques. Can you state what sizes of screws were so purchased by you?

Ans. I cannot.

9th ques. Did you so purchase general assortment of sizes?

Ans. The orders were for sizes to complete our assortment.

CALEB CONGDON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 26th day of March, A. D. 1855, before me.

JOSEPH S. PITMAN,
Commissioner.

The counsel for the plaintiffs then put in evidence and read to the jury a circular issued by the defendants, bearing date the 1st of January, 1853, in the words following, namely:

OFFICE OF NEW ENGLAND SCREW CO.,
Providence, Jan'y 1, 1853.

MESSRS. BLIVEN & MEAD:

GENT: In consequence of the great advance in the price of iron and other materials used in the manufacture of screws, our discounts on and after this date will be as follows, namely:

Premium gimlet, iron and brass	40	pr. cent.
Wilson's do. do.	45	"
Bright and blue ro. heads	30	"

Yours, respectfully,
NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*

The counsel for the plaintiffs here rested the case.

The counsel for the defendants then produced and read the following letter from the defendants to the plaintiffs dated 13 October, 1853, namely:

PROVIDENCE, *Oct.* 13, 1853.

MESSRS. BLIVEN & MEAD, *New York:*

GENT: As there has been much done, both by writing and otherwise, in relation to the matter in dispute between us, the present is to say that we know of no reason why your business with us should not be conducted in the same manner as with all our other customers; but should you think otherwise it will be best to have our business relations brought to a close at once. There cannot be a clearer case of right than ours, not only by an universal custom of filling orders, but also by the conditions as specified from time to time through our whole correspondence with you; for instance, as far back as March 11, 1852, we say we shall not be able to furnish but small part of the small sizes ordered. Oct. 16, '52, we write, in accepting your orders it must be understood that we furnish the sizes in the proportions we make them. Nov. 6, '52, in accepting your order for Wilson's screws, we say they are with us an incidental product, and the supply limited and somewhat variable, and in taking orders for them it is understood that we fill as far as we may be able at that time. April 19, '53, we write, we will enter your order for twenty thousand gross, to be taken up in its turn and filled as well as we may be able at the time, consistently with our obligations to other customers.

Any comment upon the above we think unnecessary. We would say in conclusion, if you remit us the amount of our account, now overdue, at once, we will take up your orders in turn, and fill them as far as we may be able, and shall be happy to continue to do business with you, placing you, as we always have done, among our first-class customers; but if you shall elect otherwise we shall certainly be under the necessity of requiring you to pay us the amount due us without any further delay.

Respectfully, yours,
NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*

Jonathan L. Slocum was then recalled by the counsel for the defendants and testified in substance as follows, viz:

When we filled orders partially we were in the practice of sending in our bills for the screws delivered. Don't know of an instance between September, 1852, and September, 1853, except of the partial filling of orders; the bills for this were always sent and were uniformly paid by the plaintiffs and others. This was our custom.

This evidence was in due season objected to by the counsel for the plaintiffs as inadmissible, because irrelevant and immaterial; but the objection was overruled and the evidence was admitted. The counsel for the plaintiffs excepted to the ruling and to the admission of the evidence.

Being cross-examined the witness testified as follows: I cannot say what knowledge the plaintiffs had of how we transacted business with our other customers.

The counsel for Bliven & Mead then put in evidence a letter from the plaintiffs to the defendants, bearing date the 7th of September, 1853.

NEW YORK, *Sept.* 7, 1853.

Mr. H. L. KENDALL, Ag't New England Screw Co.

DEAR SIR: Your letter of the 2d instant is at hand, in which you say our order of the 16th of May will be reached in a few weeks, expressing a wish to know whether we will accept your draft for the amount of your statement, intimating that you will not execute our order of that date until we consent to accept the draft.

In reply we would say that our letter to you dated May 21st last, (to which we now refer you,) explains our views and covers the amount of our claim, only that we there refer to dates, without giving the number of gro. of screws, or the amount in figures we claim as our due, which, on your request, we will immediately furnish.

Your own good sense of right and law will enable you to know that you cannot collect the amount of your claim without deducting the overcharge, 60 $\frac{39}{100}$, on your bill of February 9th last, and until you fulfil your old contracts with us at old prices; our claim is unanswerable in equity. You do not, and cannot, advance a single argument in reason to sustain the position you have assumed in this matter. That you may fully understand the course our interest, on account of your non-fulfilment of your contract with us, has forced us to take, we would say that we will not accept the draft until this matter is amicably settled between us.

There is now a large lot of screws due us on our orders of last fall at old prices. You have our order of Feb'y 10th, for 20,000 gro., and our order of April 16, (not May 16,) for 20,000 more, none of which two last dates have we received. All of which, if sent immediately, we can sell at fair profits. Now we will accept and pay your draft for $1,929 $\frac{62}{100}$, at 6 mos., from March 17 last, providing you will send us in place of all orders now due us, say 50,000 gro. of Wilson's or New England gimlet screws, at the largest discount you are now selling at.

Requesting your early reply, we remain,

Respectfully, yours,

BLIVEN & MEAD.

The counsel for Bliven & Mead then read in evidence a letter from them to the New England Screw Co., bearing date the 21st of May, 1853, as follows, namely:

NEW YORK, *May* 21, 1853.

MR. H. L. KENDALL:

DEAR SIR: Your letter of yesterday is at hand, in which you say, "having reached an order and filled it as far as possible, we consider it finished, and pass wholly from it."

We would say, that we are perfectly astonished at this rule of business, and have never had any intimation of it before; have carefully examined all the circulars you have ever sent to us, and find no such terms. The thing is ridiculous. We give you an order, which is accepted at a fixed price; the contract being made, we, in our turn, sell the goods, to be delivered unconditionally, and always fill our orders, as every good merchant will, without regard to loss, bringing the memorandums forward until the orders are completed. If in this case 'tis a convenient rule for you, screws having advanced, 'tis not for us, and we shall remember former favors not rendered us, and hold you for every gro. of screws due us at old prices.

We refer you to our orders of Sept. 10th, and your acceptance of same Oct. 7th; our order of October 15th, your letter of acceptance dated Oct. 16; our order of Nov. 4th, your letter of acceptance Nov. 6th; our order of Nov. 17, your acceptance of the same, dated Nov. 19th, which contains the first claim, "to be charged at whatever price they may be selling at the time of delivery."

We presume that when you have carefully read our orders, and the copies of your replies to us, you will concede the justice of our claim; be assured we shall insist upon the same, as 'tis a matter of much importance to us. You will, of course, not forward the draft for acceptance until we have an understanding. Our two more recent orders for 20,000 gro. each we expect on your terms, the market price only; we shall insist upon the execution of the whole order, except, perhaps, a portion of $\frac{3}{8}$ and $\frac{1}{2}$ in., which we suppose would trouble you to furnish.

Respectfully, yours,

BLIVEN & MEAD.

Jonathan L. Slocum was recalled by the counsel for the defendants, and testified that the sizes of screws referred to in the order of the 15th Oct. are specified in the letter of that date.

I designate as small sizes No. 8, and below that number. The order of the 15th October contains 84 different sizes; I have counted the order. About 1,500 gro. of small sizes were delivered under that order. We manufactured many less of the small than of the medium sizes. I think that there were about 5,000 gro. of small

sizes ordered by the defendants on the 15th October. We sent to them a full proportion of small sizes, compared with the proportions that we usually sent to our other customers on orders containing the same number of large and leading sizes as this order had. It was in accordance with the proportion of small sizes manufactured by us compared with the large. Our machinery was arranged to make a certain proportion of small and large, and leading sizes, and that could only be varied by adding new machinery.

Being cross-examined, he stated that the profits on the smaller sizes of screws were not as great as the larger.

The counsel for the plaintiffs then produced the order of 15th October, and was about to call a witness to prove the number of small sizes contained in the order of the 15th October, when the counsel for the defendants admitted that they amounted to 3,750 gross, and no more.

It was further admitted by the counsel for the New England Screw Co., that the market value or price of screws had advanced after the dates of the respective orders. Whereupon the counsel for the said plaintiffs did then and there, on behalf of the said plaintiffs, insist before the said justice, that the said matters so produced and given in evidence on the part of the said plaintiffs as aforesaid were sufficient, and ought to be admitted and allowed as decisive evidence to entitle the said plaintiffs to a verdict on the said issue between them and the said defendant so joined as aforesaid; and the said counsel for the said plaintiffs did then and there pray the said justice to admit and allow the said matters so produced and given in evidence for the said plaintiffs to be conclusive in favor of the said plaintiffs, to entitle them to a verdict in this cause; but to this the counsel for the defendants did then and there object, and insist before his honor, the said justice, on behalf of the said defendants, that the said several matters so produced and given in evidence on the part of the plaintiffs were not sufficient, and ought not to be admitted or allowed, to entitle the said plaintiffs to a verdict; but that the said matters so produced and given in evidence on the part of the said defendant as aforesaid were sufficient and ought to be admitted and allowed as decisive evidence to entitle the said defendant to a verdict, and to bar the said plaintiffs of their action aforesaid. And the said justice did then and there declare and deliver his opinion to the jury aforesaid, that the contracts for the sale of screws by the defendant to the plaintiffs were subject to the custom of the defendant to fill the same in part only. Whereupon the counsel for the plaintiffs did then and there except to the said last opinion of his honor, the justice; and the said justice did then and there further declare and deliver his opinion to the jury, that the plaintiffs, from having been dealers with the defendants, and from the correspondence between them, were

chargeable with notice of the defendants' custom to only fill their said contracts in their order, and in proportion with each other, and not in full, according to the strict terms thereof.

Whereupon the counsel for the plaintiffs did then and there except to the said last opinion of his honor, the justice, and the said justice, under the charge and with the directions aforesaid, left the aforesaid issue and the evidence so given on the trial thereof, as aforesaid, to the said jury; and the jury aforesaid then and there gave their verdict for the said defendant; and inasmuch as the said several matters so produced and given in evidence on the part of the said plaintiffs, and by their counsel aforesaid objected and insisted on, do not appear by the record of the verdict aforesaid, the said counsel for the said plaintiffs did then and there propose their aforesaid exceptions to the ruling, decisions and opinions of his honor, the justice, and requested him to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence on the part of the said plaintiffs, as aforesaid, according to the form of the statute in such case made and provided; and thereupon his honor, the justice, at the request of the said counsel for the said plaintiffs, did put his seal to this bill of exceptions on the fourth day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

S. NELSON. [L. S.]

(*Endorsed:*)

Circuit court of the U. S. for the southern district of N. Y. Chas. Bliven and Edward B. Mead vs. The New England Screw Co.

WRIGHT & MERRIHEW,
Att'ys for Bliven & Mead.

HARRINGTON & DODGE,
Att'ys for New England Screw Co.

Filed Dec. 11th, 1857.

Filed Dec. 4, 1858.